STATE BAR OF CALIFORNIA – RULES REVISION COMMISSION
CHART COMPARING MODEL RULES & CALIFORNIA RULES, SORTED BY ETHICS 2000 MODEL RULE

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MR 1.0(A): TERMINOLOGY (a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.	No corresponding California rule or discussion	1. Reference is made to Ethics 2000 simply for clarification. For the most part, the rules proposed by the Ethics 2000 Commission have been adopted by the ABA's House of Delegates and are now the current "Model Rules". 2. Prior to the Ethics 2000 version of the Model Rules, definitions appeared in a "terminology" section that was not numbered. With Ethics 2000, the Terminology section has been numbered rule 1.0. The Reporter explained: "The purpose of this change is to give the defined terms greater prominence and to permit the use of Comments to further explicate some of the provisions." Reporter's Explanation of Changes to Model Rule 1.0.
MR 1.0(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.	No corresponding California rule or discussion	1. California rules require that the client "consents in writing" (e.g., CR 3-300), or that the lawyer obtain client's "informed written consent" (e.g., CR 3-310(C), or that the lawyer provide "written disclosure to the client" (e.g., CR 3-310(B)), but has no provision specifically allowing the lawyer to "confirm" the client's consent in writing.
MR 1.0(c) "Firm" or "law firm" denotes a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a	**CAL. RULE 1-100(B)(1). RULES OF PROFESSIONAL CONDUCT, IN GENERAL** (1) "Law Firm" means: (a) two or more lawyers whose activities	1. Although MR 1.0(c) does not expressly refer to an office of government lawyers (Cal.Rule 1-100(B)(1)(d) refers to "a publicly funded entity), Cmt. 3 to MR 1.0 states: "With respect to the law

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legal services organization or the legal department of a corporation or other organization.	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.	department of an organization, *including the government*, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct." (Emphasis added) 2. Cmts. 3 & 4 to MR 1.0 also note that with organizational clients, it may be difficult to identify with precision who the client is. 3. See Comment re MR Comment 2, below.
MR 1.0(d) "Fraud" or "fraudulent" denotes conduct having that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.	No corresponding California rule or discussion	1. The word "fraud" does not appear in the CRPCs
MR 1.0(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.	**CAL. RULE 3-310(A)(1) & (2). AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS** (A) For purposes of this rule: (1) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client; (2) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;	1. Unlike MR 1.0(e), which applies globally to all model rules, California's definition of "informed written consent" is limited in application to rule 3-310. 2. Ethics 2000 replaced "consent after consultation" with "gives informed consent" throughout the rules. The Reporter explained: "The Commission believes that "consultation" is a term that is not well understood and does not sufficiently indicate the extent to which clients must be given adequate information and explanation in order to make reasonably informed decisions. The term "informed consent," which is familiar from its use in other contexts, is more likely to convey to lawyers what is required under the Rules. No change in substance is intended." Reporter's

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		Explanation of Changes to MR 1.0. 3. See MR 1.0, cmts. 6 & 7.
MR 1.0(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.	No corresponding California rule or discussion	1. The terms "knows" or "knowingly" are used in many California rules (e.g., rules 1-120; 1-200(A), (B); 1-311(B); (D); 1-400(B)(2)(b), etc.) but are not defined. 2.
MR 1.0(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.	**CAL. RULE 1-100(B)(5). RULES OF PROFESSIONAL CONDUCT, IN GENERAL** (5) "Shareholder" means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.	
MR 1.0(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.	No corresponding California rule or discussion	1. The terms "reasonable" or "reasonably" as defined in MR 1.0(h) (i.e., in relation to the lawyer's conduct) are used in a number of California rules (e.g., 1-400, Standard (3); 3-700(A)(2)), but are not defined. 2. The terms "reasonable" or "reasonably" are also used many time in relation to other matters, e.g., 1-320(A)(1) ("reasonable period of time"), 3-300(A) ("terms are fair and reasonable to the client). Presumably the latter uses would not require definition.
MR 1.0(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.	No corresponding California rule or discussion	

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MR 1.0(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.	No corresponding California rule or discussion	1. The term "reasonably should know" is used several times in the California rules (e.g., 1-311(B); (D); 3-310(B)(2), (3); 5-120), but is not defined
MR 1.0(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.	No corresponding California rule or discussion	
MR 1.0(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.	No corresponding California rule or discussion	1. The terms "substantial" or "substantially" are used several times in the California rules (e.g., 3-310(B)(2)(b), (3); 3-600(B), (C); 4-100(A); 4-400, etc.). 2. No general definition of "substantial," but rule 2-300, Discussion ¶.2 defines "all or substantially all of a law practice."
MR 1.0(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.	No corresponding California rule or discussion	1. The term "tribunal" is used several times in the California rules (e.g., 2-300; 2-400; 3-210; 3-700) but is not defined.
MR 1.0(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing,	**CAL. RULE 3-310(A)(3). AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS** "(A) For purposes of this rule: * * *	1. Unlike MR 1.0(n), Evidence Code § 250 makes no mention of electronic signatures. 2.

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photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.	(3) 'Written' means any writing as defined in Evidence Code section 250." **CAL. EVIDENCE CODE § 250. WRITING** "'Writing' means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof."	
MR 1.0 COMMENTS 1. MR 1.10, cmt. 1 states: "If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter." 2. Cmt. 2 notes that whether two or more lawyers constitute a firm per 1.0(c) can depend on specific facts, and notes that although two lawyers who share office space are ordinarily not a firm, "if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules." Cmt. 2 also states that in doubtful space-sharing scenarios, not all rules applicable to firms may apply. 3. Cmt 3 notes that although there is no question members of an organization's law department (including government) constitute a firm, "[t]here can be	1. No corresponding California rule or discussion 2. No corresponding California rule or discussion, but see Notes & Comments 3. No corresponding California rule or discussion 4. No corresponding California rule or discussion 5. No corresponding California rule or discussion 6. See **NOTES & COMMENTS RE MR 1.0(e)**, above 7. No corresponding California rule or discussion 8. No corresponding California rule or discussion 9. No corresponding California rule or discussion 10. No corresponding California rule or discussion	1. Concerning Cmt. 2 to MR 1.0, refer to State Bar Formal Opn. 1997-150 [Sharing Office Space]. 2.

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uncertainty … as to the identity of the client" (e.g., subsidiaries, etc.) 4. Cmt. 4 notes the same considerations as in cmt. 5 apply to lawyers in legal aid and LSOs. 5. Cmt. 5 notes that "fraud" and "fraudulent" are governed by the substantive or procedural law of the applicable jurisdiction, that it does not include merely negligent misrepresentation, etc., and that "it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform." 6. Cmt. 6 is a lengthy comment that elaborates on the meaning of "informed consent." It notes inter alia: "In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent." 7. Cmt. 7 notes consent requires an "affirmative response" by the client, though it can be inferred from the client's conduct. Cmt. 7 also cross-references rules that require "informed consent." 8. Cmt. 8 cross-references the rules under which screening is allowed (1.11, 1.12 & 1.18). 9. Cmt. 9 discusses the mechanics of establishing an effecting screening mechanism, noting that "[t]he purpose of		

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screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected." 10. Cmt. 10 notes that timely implementation of screening ("as soon as practical after a lawyer or law firm reasonably should know there is a need …') is essential to its effectiveness.		
MR 1.1: COMPETENCE "A lawyer shall provide competent representation to a client.	**CAL. RULE 3-110(A). FAILING TO ACT COMPETENTLY** **CAL. RULE 3-310(A):** A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.	1. California, unlike the MR's, requires that the lawyer's incompetence be intentional, reckless or repeated.
MR 1.1 Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."	**CAL. RULE 3-310(B):** For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.	1. MR 1.1, Cmt 1, notes relevant factors in determining whether lawyer employs requisite skill and knowledge in a matter to be "the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question."

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MR 1.1 COMMENTS 1. MR 1.1, Cmt. 2 provides, inter alia, that "[a] lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question." 2. MR 1.1, Cmt. 3 also allows lawyer to provide "reasonably necessary" advice or assistance in emergency in field where lawyer lacks skill. 3. MR 1.1, Cmt. 4 allows lawyer to accept representation if lawyer can become competent through "reasonable preparation." 4. MR 1.1, Cmt. 5 provides guidance by explaining what "handling of a particular matter" requires. It also note client and lawyer can agree to "limit the matters for which the lawyer is responsible" per MR 1.2. 5. MR 1.1, Cmt. 6 states a lawyer "should" keep up with changes in the law "[t]o maintain the requisite knowledge and skill …."	1. **CAL. RULE 3-110(C):** "If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required." 2. **CAL.RULE 3-110 DISCUSSION:** Lawyer can provide "reasonably necessary" legal assistance in an emergency. 3. No corresponding California rule or discussion 4. No corresponding California rule or discussion 5. No corresponding California rule or discussion	1. Rule 3-110(C) and MR 1.1, Cmt. 2 both allow a lawyer to achieve the necessary skill or knowledge through study. 2. Rule 3-110's Discussion and MR 1.1, Cmt. 3 allow lawyer to act in emergency even where lawyer does not have the requisite skill or knowledge.

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MR 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER "(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify."	**CAL. RULE 3-510. COMMUNICATION OF SETTLEMENT OFFER** **CAL. RULE 3-510(A):** A member shall promptly communicate to the member's client: (1) All terms and conditions of any offer made to the client in a criminal matter; and (2) All amounts, terms, and conditions of any written offer of settlement made to the client in all other matters. **CAL. RULE 3-510(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.	1. Although California does not expressly require a lawyer to abide by the client's decisions regarding settlement, etc., rule 3-510, by requiring a lawyer to communicate any plea bargain or written settlement offer effectively accomplishes the same thing 2. See also **rule 3-500** and **CAL. B&P CODE § 6068(m)**, both requiring communication of "significant developments relating to the employment or representation …." 3. Consider limited representation ("unbundling") in California
MR 1.2(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."	No corresponding California rule or discussion	
MR 1.2(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."	No corresponding California rule or discussion	1. The Discussion to Rule 3-400 ("Limiting Liability to Client") provides in part: "Rule 3-400 is not intended to . . . prevent a member from reasonably limiting the scope of the member's employment or representation." 2. Consider limited representation ("unbundling") in California
MR 1.2(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of	**CAL. RULE 3-210. ADVISING THE VIOLATION OF LAW** "A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the	1. Other California Rules arguably relevant here include **CAL. RULE 3-200** ("Prohibited Objectives of Employment")

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conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."	member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal."	and **CAL. B&P CODE § 6103** ("Sanctions for Violation of Oath or Attorney's Duties")
DELETED		
MR 1.2 COMMENTS 1. MR 1.2, Cmt. 1 provides client has "the ultimate authority to determine the purposes to be served by the legal representation …." 2. Cmt. 2 notes lawyer and client may disagree about the means to attain client's objectives and that clients "normally defer to the special knowledge and skill of their lawyer" about "technical, legal and tactical" matters, though lawyers "generally defer" to client about expenses, but does not specify how to resolve in every case. 3. Cmt. 3 states client can authorize lawyer "to take specific action" on his behalf (and withdraw authorization at any time). 4. Cmt. 4 states situation with diminished capacity client controlled by MR 1.14. 5. Cmt. 5 states "legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval." 6. Cmts. 6 to 9 address agreements limiting scope of representation per MR 1.1(c). 7. Cmts. 10 to 14 discuss "criminal, fraudulent and prohibited transactions,"	1. No corresponding California rule or discussion 2. No corresponding California rule or discussion 3. No corresponding California rule or discussion 4. No corresponding California rule or discussion 5. **CAL. B&P CODE 6068(h)**? 6. No corresponding California rule or discussion 7. No corresponding California rule or discussion	

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noting that paragraph (d) prohibits lawyer from "knowingly" counseling or assisting the client in such activities. Cmt. 11 notes lawyer's usual course when knows client is engaging in criminal or fraudulent action is to withdraw per MR 1.16(a), though lawyer may have to disclose per MR 4.1.		
MR 1.3: DILIGENCE "A lawyer shall act with reasonable diligence and promptness in representing a client."	**CAL. RULE 3-110(B). FAILING TO ACT COMPETENTLY** (B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) **diligence**, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service. **CAL. B&P CODE §6128. DECEIT, COLLUSION, DELAY OF SUIT AND IMPROPER RECEIPT OF MONEY AS MISDEMEANOR** Every attorney is guilty of a misdemeanor who either: * * * (b) Willfully delays his client's suit with a view to his own gain.	1. Although not directly addressing the issues of diligence or promptness, certain rules at least indirectly concern the issue of delay: a. Cal. Rule 3-210 (can test the validity of law, rule, or ruling of tribunal only in good faith) b. Cal. Rule 5-100 (government lawyer may not institute criminal charges without probable cause) c. B&P Code § 6068(c) 2. Zealous advocacy not expressly required in either MR's or CRPC's, but case law appears to require it. See, e.g., People v. Crawford (1968)159 Cal.App.2d 847, 66 Cal.Rptr. 527

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MR 1.3 COMMENTS 1. MR 1.3, Cmt. 1, provides, inter alia, "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor." 2. Cmt. 2 provides a lawyer must control workload so he can handle each matter competently. 3. Cmt. 3 addresses "procrastination" but notes MR 1.3 does not prevent lawyer from granting reasonable requests for continuances. 4. Cmt. 4 discusses lawyer's duty to complete all matters he has undertaken and cross-references MR 1.4 (duty to consult with client re end of relationship) and MR 1.2 (limiting scope of representation).	1. No corresponding California rule or discussion 2. No corresponding California rule or discussion 3. No corresponding California rule or discussion 4. No corresponding California rule or discussion	
MR 1.4: COMMUNICATION "(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed	**CAL. RULE 3-500. COMMUNICATION** "A member shall keep a client reasonably informed about significant developments relating to employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed." **CAL. B&P CODE § 6068(m)**	1. *See also* **CAL. RULE 3-510** (Communication of Settlement Offer) 2. Per **CAL. RULE 3-500**, **DISCUSSION** a lawyer will not be disciplined for failing to communicated insignificant or irrelevant information.

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about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law."	"It is the duty of an attorney: (m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."	
MR 1.4(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."	No corresponding California rule or discussion	1. But see rule 3-310(A)(1), which defines "disclosure" to mean "informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client."
MR 1.4 COMMENTS 1. MR 1.4, cmt. 2, provides that if the rules require that a particular decision must be made by the client, then the lawyer must "promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take." 2. Cmt. 3 states that: "Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives," but notes that under exigent circumstances the lawyer may take action without client consultation so long as the lawyer promptly advises client of the action taken. 3. Cmt. 4 essentially states that the lawyer	1. No corresponding California rule or discussion 2. No corresponding California rule or discussion 3. See **CAL. RULE 3-500 & B&P CODE §**	

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should be in regular communication with the client (and return phone calls!)	**6068(m)**	
4. Cmt. 5 states in part: "The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so," gives examples by comparing a substantive client decision with a tactical trial decision, and provides: "The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation."	4. No corresponding California rule or discussion	
5. Cmt. 6 states: "Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult," but notes it may be impracticable where, for example, the client is of diminished capacity.	5. No corresponding California rule or discussion	
6. Cmt. 7 notes that in some instances, the lawyer may want to withhold information "when the client would be likely to react imprudently to an immediate communication."	6. No corresponding California rule or discussion	

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MR 1.5: FEES "(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent."	**CAL. RULE 4-200. FEES FOR LEGAL SERVICES** (A) A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee. (B) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following: (1) *The amount of the fee in proportion to the value of the services performed*. (2) *The relative sophistication of the member and the client.* (3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly. **[1]** (4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member. **[2]** (5) The amount involved and the results obtained. **[4]** (6) The time limitations imposed by the client or by the circumstances. **[5]** (7) The nature and length of the professional relationship with the client. **[6]** (8) The experience, reputation, and ability of the member or members performing the services. **[7]**	1. Reference to the corresponding Model Rule factor is in brackets following the California factor. Factors unique to California are in italics. Factors unique to the Model Rules are in bold. 2. The standard for the Model Rule is "reasonableness" of the fee; the standard for the California Rule is "unconscionability." 3. By its terms ("Among the factors to be considered …."), rule 4-200's factors are not exclusive. MR 1.5, Cmt. 1, expressly states the same.

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	(9) Whether the fee is fixed or contingent. **[8]** (10) The time and labor required. **[1]** (11) *The informed consent of the client to the fee*.	
MR 1.5(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client."	**CAL. B&P CODE § 6148** 1. Concerning writing requirement, see **B&P CODE § 6148** (Fee Contract when fee "reasonably foreseeable" to exceed $1,000.00) 2. Concerning communication of change in basis or rate of fee, see rule 3-500 (communication of significant developments) (?)	1. Concerning writing, California requires it; MR 1.5(b) does not (though it is "preferable".) 2. Concerning communication of change in basis or rate fee, *see also* Severson & Werson v. Bolinger (Cal.App. 1991) 235 Cal.App.3d 1569, 1 Cal.Rptr.2d 531 (firm cannot increase fee rate without notice).
MR 1.5(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement	**CAL. B&P CODE § 6147** 1. Concerning contingent fee agreements, see **B&P CODE § 6147**	1. Both California and MR 1.5 require contingency fee K to be in a writing, "*signed by the client*." Note that this is different from most other Model Rules written requirements, which require only that the client's consent be "confirmed in writing." *See, e.g.*, MR 1.7(b). 2. Both B&P Code § 6147(a)(2) and MR 1.5(c) require an explanation of how costs and expenses will affect the recovery. 3. Only California expressly provides that failure to comply with terms of § 6147 makes the fee K voidable at client's option. § 6147(b) 4. Section 6147 does not apply to workers compensation claims, 6147(c), or contingency fees based on the recovery of claims between merchants. § 6147.5.

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stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination."		
MR 1.5(d) A lawyer shall not enter into an arrangement for, charge, or collect: (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or (2) a contingent fee for representing a defendant in a criminal case."	No corresponding California rule or discussion	
MR 1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable."	**CAL. RULE 2-200. FINANCIAL ARRANGEMENTS AMONG LAWYERS** "(A) A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless: (1) The client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and (2) The total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200. (B) Except as permitted in paragraph (A) of this rule or rule 2-300, a member shall not compensate, give, or promise anything of value to any lawyer for the purpose of recommending or securing employment of the member or the member's law firm by a	1. California does not require the referring lawyer to assume joint responsibility for the matter. Neither do the Model Rules, but only if the fee is divided "in proportion to the services performed by each lawyer." [Note: Ethics 2000 proposed removing the "joint responsibility" and proportional services requirements, but the ABA's House of Delegates rejected it.] 2. Both rule 2-200(A)(1) and MR 1.5(e)(2) requires client consent to the terms of the fee arrangement, including each lawyer's share. Both require a writing, the MR requiring only that the K be "confirmed in writing". 3. Rule 2-200(A)(2) requires that the total fee not be "unconscionable" and MR 1.5(e)(3) requires the total fee be "reasonable." 4. California (and not the MR) also requires that the total fee not be increased solely because of the fee division. 5. MR 1.5, cmt. 8 notes that MR 1.5(e) does not apply to situation where lawyers who

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	client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any lawyer who has made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future."	were previously associated in a law firm divide fees. 6. The Model Rules have no provision corresponding to rule 2-200(B).
MR 1.5 COMMENTS 1. MR 1.5, cmt. 1, notes that the eight listed factors are not exclusive, and a given factor may not be relevant in particular case. Cmt. 1 also addresses charges to clients for "in-house" expenses. 2. Cmt. 2 suggests that with a new client, the lawyer should provide the client with some kind of writing reflecting their understanding about the fee rate. 3. Cmt. 3 notes that contingent fees are subject to the "reasonableness" standard of MR 1.5, and that "a lawyer must consider the factors that are relevant under the circumstances." 4. Cmt. 4 states unearned advance fees must be returned to client. It also notes that lawyer may take fee in property, but usually such fees will also be subject to MR 1.8(a), the rule concerning business transactions with clients. 5. Cmt. 8 notes that MR 1.5(e) does not	1. No corresponding express statement in California rules. 2. Writing required in California for fee Ks concerning matters in excess of $1,000. 3. Whether fee is contingent is one of factors to be considered. 4. **CAL. RULE 4-100(D)(2)** requires a member to: "Promptly refund any part of a fee paid in advance that has not been earned," though it is not required of a "true retainer". The Discussion to rule 3-300 states: "Rule 3-300 is not intended to apply to the agreement by which the member is retained by the client, *unless the agreement confers on the member an ownership, possessory, security, or other pecuniary interest adverse to the client*. Such an agreement is governed, in part,	

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apply to situation where lawyers who were previously associated in a law firm divide fees. 6. Cmt. 9 notes that a lawyer must comply with any fee arbitration procedure established by the bar, and should consider submitting to it if it is voluntary.	by rule 4-200." (emphasis added) 5. No corresponding statement in rule 2-200, though **CAL. RULE 2-200(A)** provides the rule does not apply where the fee division is among partners or associates. 6. See **CAL. B&P CODE §§ 6200** et seq., re Mandatory Fee Arbitration.	
MR 1.6: CONFIDENTIALITY OF INFORMATION "(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)."	**CAL. B&P CODE § 6068(e)(1)** "It is the duty of an attorney: (e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." **CAL. RULE 3-100(A)** (A) A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.	1. B&P Code § 6068(e) was amended by **AB 1101** in 2003 to provide the general rule of confidentiality in subdivision (1) and an exception for life-threatening criminal acts in new subdivision (2). It was given an operative date of 7/1/2004 to permit the State Bar to develop the corresponding Rule 3-100. 2. AB 1101 also provided for the creation of a task force to draft a Rule of Professional Conduct to consider issues that new subdivision (1) raised. 3. There is no provision in rule 3-100 that corresponds exactly to B&P Code § 6068(e)(1). However, cmt. [1] to rule 3-100 quotes section 6068(e)(1).
MR 1.6(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm;	**CAL. B&P CODE § 6068(e)(2)** "(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual."	1. See Notes for B&P Code § 6068, above. 2. Note that California requires that unlike MR 1.6(b)(1), both B&P Code § 6068(e)(2) and rule 3-100(B) require a criminal act to trigger the exception to confidentiality. 3. Neither MR 1.6 nor B&P Code § 6068(e)(2) or rule 3-100(B) requires that the threatened harm be imminent. 4. In addition to section 6068(e)(2), *see also* **CAL. EVIDENCE CODE § 956.5**, which

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	CAL. RULE 3-100(B) (B) A member may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.	provides there is no attorney-client privilege "if the lawyer reasonably believes that disclosure of any confidential communication relating to the representation of a client is necessary to prevent a criminal act that the lawyer believes is likely to result in death or substantial bodily harm." 5. In addition to providing for an exception to confidentiality that is similar to MR 1.6(b)(1), **CAL. RULE 3-100(C)** provides that before revealing confidential information, a member must, if reasonable under the circumstances: "(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii); and [¶.] (2) inform the client, at an appropriate time, of the member's ability or decision to reveal information as provided in paragraph (B)." MR 1.6 contains no similar provisions. 6. **CAL. RULE 3-100(D)** provides: "In revealing confidential information as provided in paragraph (B), the member's disclosure must be no more than is necessary to prevent the criminal act, given the information known to the member at the time of the disclosure." A similar limitation can be found in the opening paragraph of MR 1.6(b). 7. **CAL. RULE 3-100(E)** provides: "A member who does not reveal information permitted by paragraph (B) does not violate this

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		rule." MR 1.6 contains no similar provision.
(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services; (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services; (4) to secure legal advice about the lawyer's compliance with these Rules; (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or (6) to comply with other law or a court order."	No corresponding express exceptions to the duty of confidentiality in California for criminal fraud or fraud. *See* **NOTES & COMMENTS**.	1. Model Rule 1.6(b) was modified on August 11, 2003, when the ABA House of Delegates voted 218 to 201 to adopt the Ethics 2000 exceptions to MR 1.6 that allow a lawyer to reveal confidential information to prevent, rectify or mitigate a client's crime or fraud likely to result in substantial injury to financial or property interests of third party. The changes are shown in red & underlined. 2. Former (b)(2)-(4) were renumbered (b)(4)-(6). 3. The ABA House of Delegates rejected Ethics 2000's proposed exception allowing a lawyer to disclose a client's criminal fraud "reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services." 4. Concerning a lawyer's ability to disclose confidential information to secure legal advice about the lawyer's compliance with the rules of professional conduct, see Fox Searchlight Pictures, Inc. v. Paladino (2001) 89 Cal.App.4th 294, 106 Cal.Rptr.2d 906.
MR 1.6 COMMENTS 1. MR 1.6, cmt. 2, sets out the policy underlying the duty of confidentiality, i.e., encouraging full & frank communication by the client 2. Cmt. 3 distinguishes between the	1. A statement similar to MR 1.6, cmt. 2, may be found in **CAL. RULE 3-100, cmt. [1]**. In addition, there is abundant case law to the same effect. 2. A similar statement to MR 1.6, cmt. 3,	1. There are no California statutes, rules or discussion corresponding to Comment 4. 2. There are no California statutes, rules or discussion corresponding to Comment 5. 3. In addition to **CAL. RULE 3-100, cmt. [3]**, which discusses the policies underlying an exception for life-threatening harm,

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attorney-client privilege and the duty of confidentiality and notes: "The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law." 3. Cmt. 4 notes that MR 1.6(a)'s prohibition also "applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person." 4. Cmt. 5 discusses how "a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation." 5. Cmt. 6 discusses MR 1.6(b)(1), the life-threat exception to the duty of confidentiality. 6. New cmt. 7 elaborates on MR 1.6(b)(2). After noting that the exception applies only when the lawyer's services have been used to further the fraud, the comment states: "Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule." Cmt. 7 also cautions that lawyer may not assist the client in crime or fraud under MR 1.2(d); lawyer may be obligated to withdraw under MR 1.16, and cross-	may be found in **CAL. RULE 3-100, cmt. [2]** 3. No corresponding California discussion 4. No corresponding California discussion 5. **CAL. RULE 3-100, cmt. [3]**, also discusses the life-threat exception to the duty of confidentiality and also recognizes the "overriding value of life." See also Note 2 in next column. 6. No corresponding California discussion	other comments to rule 3-100 elaborate on how a member should address the issues that may arise when confronted with such a situation. For example, **CAL. RULE 3-100, cmt. [6]** sets out factors to consider in deciding whether to disclose confidential information; **CAL. RULE 3-100, cmt. [7]** presents factors to consider in persuading a client not to commit a criminal act; **CAL. RULE 3-100, cmt. [8]** emphasizes that disclosure must be no more than is necessary to prevent the criminal act; and **CAL. RULE 3-100, cmt. [9]** discusses factors to consider in deciding if and when the lawyer should inform the client of the member's ability or decision to disclose confidential information. 4. Cmts. 7-14. There are no California statutes, rules or discussion corresponding to MR 1.6's exceptions. 5. Cmts. 15-17. There are no California statutes, rules or discussion corresponding to these comments.

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references MR 1.13's permissive disclosure outside the client entity.		
7. New cmt. 8 elaborates on MR 1.6(b)(3), which applies when the lawyer does not learn of the crime or fraud until after it has been occurred. It notes that although the client's acts cannot be prevented at this point, the may be prevented. Finally, the cmt. states: "Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense."	7. No corresponding California discussion	
8. Cmt. 9 (old cmt. 7) notes that MR 1.6(b)(2) allows a lawyer to disclose confidential information to enable the lawyer to secure "confidential legal advice about the lawyer's personal responsibility to comply with these Rules."	8. No corresponding California discussion	
9. Cmts. 10 and 11 (old cmts. 8 and 9) address MR 1.6(b)(3), which allow lawyers to disclose confidential information related to the representation to (1) defend themselves in a civil, criminal or disciplinary action; or (2) prove they provided the services that are the subject of a fee dispute.	9. No corresponding California discussion	
10. Cmt. 12 (old cmt. 10) explains MR 1.6(b)(4).	10. No corresponding California discussion	
11. Cmt. 13 (old cmt. 11) provides that when a lawyer is ordered by a tribunal to disclose confidential information related to the representation: "Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order	11. No corresponding California discussion	

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is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law."		
12. Cmt. 14 (old cmt. 12) notes that "[p]aragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified," but that "the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure."	12. See **CAL. RULE 3-100(D)** & **CAL. RULE 3-100, cmt. [8]** concerning the *extent* of disclosure. Concerning whether a lawyer should or must take steps to dissuade the client from a course of action, see Cal. Rule 3-100(D) & **CAL. RULE 3-100, cmt. [7]**.	
13. Cmt. 15 (old cmt. 13) notes that paragraph (b) is permissive; disclosure is not mandated.	13. **CAL. RULE 3-100(B)** provides in part that "a member may, but is not required to …"	
14. Old Cmt. 14 has been deleted. It stated in part: "If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise permitted in Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like."	14. No corresponding California discussion	
15. Cmt. 16 (old cmt. 15) requires the lawyer to act competently to safeguard confidential information.	15. No corresponding California discussion	
16. Cmt. 17 (old cmt. 16) provides that "[w]hen transmitting a communication that includes information relating to the	16. No corresponding California discussion	

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representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients." 17. Cmt. 18 (old cmt. 17) notes the duty of confidentiality continues after the representation is terminated. *See also* MR 1.18, duties to prospective clients.	17. No corresponding California discussion	
MR 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS "(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; **or**	**CAL. RULE 3-310(C) AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS** * * * "(C) A member shall not, without the informed written consent of each client: (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."	1. There is no straightforward one-to-one correspondence between Rule 3-310 and MR 1.7 as the latter sets out the prohibitions in subsection (a) and then the exceptions in subsection (b). Rule 3-310 provides the exceptions ("written disclosure to," or "informed written consent of," each client) in the first clause of paragraphs (B) and (C). 2. Both 3-310(C) and MR 1.7 apply to *current* clients. 3. Rule 3-310(C)(1) requires the written consent of all clients even if conflict is only potential; MR 1.7(a) is triggered only when the representation of one client *is* "directly adverse to another client." 4. Unlike MR 1.7(b)(1), rule 3-310(C) does *not* require the lawyer to "reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client."
MR 1.7(a)(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal	**CAL. RULE 3-310(B)** "(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where: (1) The member has a legal, business,	1. MR 1.7(a)(2) is similar to rule 3-310(B), though the latter itemizes the conflicts in more detail. Further, 3-310(B) does not refer to client or former client. 2. In addition, unlike MR 1.7(b), which sets

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interest of the lawyer."	financial, professional, or personal relationship with a party or witness in the same matter; or (2) The member knows or reasonably should know that: (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and (b) the previous relationship would substantially affect the member's representation; or (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or (4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation."	out the exception to both MR 1.7(a)(1) and (a)(2), rule 3-310(B) requires only that the lawyer give <u>written disclosure</u> to the client who stands to be affected by the lawyer's prior relationships or personal interests. MR 1.7(b) requires the clients' "informed consent, confirmed in writing." 3. Rule 3-310(B) also does *not* require the lawyer to "reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client."
MR 1.7(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client	**CAL. RULE 3-310(B)** **CAL. RULE 3-310(C)** 1. See first paragraph of **CAL. RULE 3-310(C)** ["A member shall not, without the informed written consent of each client …."] 2. See first paragraph of **CAL. RULE 3-310(B)** ["A member shall not accept or continue representation of a client without providing written disclosure to the client where …."]	1. MR 1.7(b) provides for exceptions to the conflicts identified in MR 1.7(a)(1) & (2). *See* previous comments 1 to 7 for a discussion of the different disclosure and consent requirements under rule 3-310(B) and (C). 2. Note also that rule 3-310(A) defines "disclosure," "informed written consent," and "written". MR 1.0 (Terminology) provides definitions of "confirmed in writing" [MR 1.0(b)]; "informed consent" [MR 1.0(e)]; and "written" [MR 1.0(n)].

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against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing."		
MR 1.7 COMMENTS 1. MR 1.7, cmt. 1, provides in part: "Loyalty and independent judgment are essential element elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests." 2. Cmt. 2 presents an approach to resolve conflicts: "Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2) 3. Cmt. 3 addresses conflicts that may exist before representation is undertaken. 4. Cmt. 4 addresses conflicts that arise after representation is undertaken and notes	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion 4. No corresponding California discussion	

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the ordinary duty to withdraw unless consent of client(s) obtained.		
5. Cmt. 5 notes that when a conflict results from a corporate acquisition, the lawyer or firm may be able to withdraw from one of the representations.	5. No corresponding California discussion	
6. Cmt. 6 addresses conflicts where the representation is directly adverse to a client (MR 1.7(a)(1)) and provides in part: "Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated." It notes, however, that "simultaneous representation in unrelated matters of clients whose interests are only generally economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.	6. No corresponding California rule or discussion [Phantom **CAL. RULE 3-310(C)(4)**?]	
7. Cmt. 7 notes directly adverse conflicts can also arise in transactional matters.	7. See **CAL. RULE 3-310(C), DISCUSSION ¶.7**, which provides: "Subparagraphs (C)(1) and (C)(2) are intended to apply to all types of legal employment, including the concurrent representation of multiple parties in litigation or in a single transaction or in some other common enterprise or legal relationship." Similarly, **CAL. RULE 3-310(C), DISCUSSION ¶.8**, provides: "Subparagraph (C)(3) is intended to apply to representations of clients in both litigation and transactional matters."	
8. Cmt. 8 addresses MR 1.7(a)(2), noting a conflict can exist "if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests."		

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9. Cmt. 9 notes the lawyer's loyalty and independence may be materially limited by duties to former clients (MR 1.9) and fiduciary duties arising from service as trustee, etc. 10. Cmt. 10 discusses the lawyer's personal interests, such as "when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent," or when a lawyer advises a client based on the lawyer's business interests (e.g., advising taking a loan from an entity in which the lawyer has an interest). 11. Cmt. 11 discusses conflicts that may arise from blood or marriage relationships, and Cmt. 12 cross-references MR 1.8(j), which prohibits sex with a client. 12. Cmt. 13 deals with the third party payor situation governed by MR 1.8(f), and notes the lawyer must follow the protocol set out in MR 1.7(b). 13. Cmts. 14-17 deal with "non-consentable" conflicts identified in MR 1.7(b)(1)-(3). 14. Cmt. 15 provides a conflict is non-consentable under (b)(1) "if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation." 15. Cmt. 16 provides a conflict is non-consentable under (b)(2) "because the representation is prohibited by applicable law," and gives an example of representing co-Δ's in a capital case,	8. No corresponding California discussion 9. No corresponding California discussion 10. See **CAL. RULE 3-310, DISCUSSION ¶. 5,** which states in part that 3-310(B) "deals with the issues of adequate disclosure to the present client or clients of the member's present or past relationships to other parties or witnesses or present interest in the subject matter of the representation," and **CAL. RULE 3-310, DISCUSSION ¶. 6**, which provides (B) "is intended to apply only to a member's own relationships or interests, unless the member knows that a partner or associate in the same firm as the member has or had a relationship with another party or witness or has or had an interest in the subject matter of the representation." 11. No corresponding California discussion 12. No corresponding California discussion 13. See **CAL. RULE 3-120** [sex with client], which is a non-consentable conflict. See also **CAL. RULE 3-310, DISCUSSION ¶.9**, which provides: "There are some matters in which the conflicts are such that written consent may not suffice for non-disciplinary purposes. (See Woods v. Superior Court (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; Klemm v. Superior Court (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]; Ishmael v. Millington	

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even with their consent. 16. Cmt. 17 provides a conflict is non-consentable under (b)(3) "because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal." 17. Cmt. 18 provides in part that "Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client." *See* MR 1.0(e). 18. Cmt. 19 notes that in certain circumstances, the duty of confidentiality to one client may not allow the lawyer to fully inform the second client, e.g., if the first client does not consent to the disclosure. Thus, the lawyer cannot ask the second client to consent. 19. Cmt. 20 explains what is meant by "confirmed in writing" and cautions that a writing does not obviate "the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns." 20. Cmt. 21 addresses when a client revokes consent and notes the outcome of the revocation will depend on the	(1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592].) 14. No corresponding California discussion 15. No corresponding California discussion 16. No corresponding California discussion 17. No corresponding California discussion 18. See **CAL. RULE 3-310, DISCUSSION ¶.2**, which provides:" Other rules and laws may preclude making adequate disclosure under this rule. If such disclosure is precluded, informed written consent is likewise precluded. (See, e.g., Business and Professions Code section 6068, subsection (e).)" 19. No corresponding California discussion. See NOTES & COMMENTS re MR 1.0(b)	

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circumstances (e.g., prejudice to the other client(s), etc.)	20. No corresponding California discussion	
21. Cmt. 22 addresses pre-conflict waivers and states in part: "The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding." The comment further notes: "If the consent is general and open-ended, then the consent ordinarily will be ineffective …," and also that "if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation."	21. No corresponding California rule or discussion, but see Zador Corp. v. Kwan (Cal.App. 1995) 31 Cal.App.4th 1285, 37 Cal.Rptr.2d 754.	
22. Cmt. 23 states in part: "Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2)." It also notes: "The potential for conflict of interest	22. No corresponding California discussion	

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in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant."		
23. Cmt. 24 addresses issues conflicts, stating: "Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients." It also notes, however, that a conflict exists "if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case."	23. See **CAL. RULE 3-310, DISCUSSION, ¶.1**, which provides: "Rule 3-310 is not intended to prohibit a member from representing parties having antagonistic positions on the same legal question that has arisen in different cases, unless representation of either client would be adversely affected."	
24. Cmt. 25 addresses class action issues and notes: "When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1)."	24. No corresponding California discussion	
25. Cmts. 26-28 address conflicts in a transactional context. Cmt. 26 notes that "Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict." Cmt. 27 discusses conflicts in estate planning and administration. Cmt. 28 discusses when transactional conflicts are consentable, e.g., "a lawyer	25. No corresponding California discussion	

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may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them …." 26. Cmt. 29 discusses factors a lawyer should consider in undertaking common representation of prospective clients (e.g., avoid it when "contentious litigation or negotiations between them are imminent or contemplated.") 27. Cmt. 30 notes that the prevailing rule re attorney-client privilege in common representations is: "as between commonly represented clients, the privilege does not attach." 28. Similarly, Cmt. 31 notes in part that "the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit," and suggests the lawyer should at the outset "advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other." 29. Cmt. 32 states in part: "When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship	26. No corresponding California discussion 27. No corresponding California rule or discussion, but see Evid. Code § 962 (Joint Clients), which provides: "Where two or more clients have retained or consulted a lawyer upon a matter of common interest, none of them, nor the successor in interest of any of them, may claim a privilege under this article as to a communication made in the course of that relationship when such communication is offered in a civil proceeding between one of such clients (or his successor in interest) and another of such clients (or his successor in interest)." 28. No corresponding California discussion	

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normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented." 30. Cmts. 34 and 35 discuss conflicts in the organizational context. Cmt. 34 notes that because the lawyer does not necessarily represent a constituent or an affiliate organization, the lawyer "is not barred from accepting representation adverse to an affiliate in an unrelated matter" unless certain circumstances are present (e.g., an understanding between lawyer and organization). 31. Cmt. 35 discusses concerns that may arise where a lawyer for an organization is also on its board of directors.	29. No corresponding California discussion 30. No corresponding California discussion 31. No corresponding California discussion	

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MR 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES "(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction."	**CAL. RULE 3-300. AVOIDING INTERESTS ADVERSE TO A CLIENT** "A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied: (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition."	1. The terms of MR 1.8(a) and rule 3-300 are remarkably similar. Note that Ethics 2000 appears to have accepted (and the House of Delegates adopted) the California requirement that there be a writing evidencing the client's consent that is signed by the client (not just "confirmed in writing" by the lawyer as with most Model Rule writing requirements.)
MR 1.8(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules."	No corresponding California rule or discussion.	
MR 1.8(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of	**CAL. RULE 4-400. GIFTS FROM CLIENT** "A member shall not induce a client to make a substantial gift, including a testamentary gift, to the member or to the member's parent, child, sibling, or spouse, except where the client is related to the member."	1. Unlike MR 1.8(c), rule 4-400 does not prohibit a lawyer from preparing an instrument giving lawyer or relative a gift. 2. The Discussion to rule 4-400 states: "A member may accept a gift from a member's client, subject to general

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this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship."		standards of fairness and absence of undue influence. The member who participates in the preparation of an instrument memorializing a gift which is otherwise permissible ought not to be subject to professional discipline. On the other hand, where impermissible influence occurred, discipline is appropriate. (See Magee v. State Bar (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839].)" 3. Moreover, *see* **CAL. PROBATE CODE § 21350** ("Instrument Making Donative Transfer to Draftor of Instrument Is Invalid") and sections following. Under **CAL. B&P CODE § 6103.6**, violation of Probate Code § 21350 et seq. is a ground for discipline.
MR 1.8(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation."	No corresponding California rule or discussion.	1. *See* **CAL. RULE 3-300**. 2. *See also* Maxwell v. Superior Court (Cal. 1982) 639 P.2d 248.
MR 1.8(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client."	**CAL. RULE 4-210. PAYMENT OF PERSONAL OR BUSINESS EXPENSES INCURRED BY OR FOR A CLIENT** (A) A member shall not directly or indirectly pay or agree to pay, guarantee, represent, or sanction a representation that the member or member's law firm will pay the personal or business expenses of a prospective or existing client, except that this rule shall not prohibit a member: (1) With the consent of the client, from paying or agreeing to pay such expenses	1. Unlike MR 1.7(e), rule 4-210 is not limited to providing financial assistance in "pending or contemplated litigation." 2. Rule 4-210(A)(1) allows payment of expenses out of fund collected on behalf of the client. 3. Rule 4-210(A)(2) has no counterpart in MR 1.8(e). 4. Unlike MR 1.8(e)(1), Rule 4-210(A)(3)

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	to third persons from funds collected or to be collected for the client as a result of the representation; or (2) After employment, from lending money to the client upon the client's promise in writing to repay such loan; or (3) From advancing the costs of prosecuting or defending a claim or action or otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter. Such costs within the meaning of this subparagraph (3) shall be limited to all reasonable expenses of litigation or reasonable expenses in preparation for litigation or in providing any legal services to the client. (B) Nothing in rule 4-210 shall be deemed to limit rules 3-300, 3-310, and 4- 300.	limits the outlay of expenses to "reasonable expenses". 5. In both MR 1.8(e) and 4-210(A), the client's repayment "may be contingent on the outcome of the matter." 6. Rule 4-210 makes no specific mention of "indigent" clients.
MR 1.8(f) A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by Rule 1.6."	**CAL. RULE 3-310(F). AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS** * * * (F) A member shall not accept compensation for representing a client from one other than the client unless: (1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and (2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) The member obtains the client's informed written consent, provided that no	1. **CAL. RULE 3-310(F)** for the most corresponds to MR 1.8(f). 2. Unlike MR 1.8(f), rule 3-310(F)(3) requires informed *written* consent. 3. Consent under 3-310(F)(3) not required under certain circumstances. 4. Rule 3-310's Discussion provides: "Paragraph (F) is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (*See* San

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	disclosure or consent is required if: (a) such nondisclosure is otherwise authorized by law; or (b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.	Diego Navy Federal Credit Union v. Cumis Insurance Society (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].)"
MR 1.8(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure of shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement."	**CAL. RULE 3-310(D). AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS** * * * "(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client."	1. Unlike MR 1.8(g), rule 3-310(D) does not refer to criminal plea agreements. 2. Both require informed written consent of each client. 3. Rule 3-310's Discussion states: "Paragraph (D) is not intended to apply to class action settlements subject to court approval."
MR 1.8(h) A lawyer shall not: (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing that of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith."	**CAL. RULE 3-400. LIMITING LIABILITY TO CLIENT** "A member shall not: (A) Contract with a client prospectively limiting the member's liability to the client for the member's professional malpractice; or (B) Settle a claim or potential claim for the member's liability to the client for the member's professional malpractice, unless the client is informed in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and is given a reasonable opportunity to seek that advice."	1. Unlike MR 1.8(h), which allows lawyer to prospectively limit liability if the client is independently represented, rule 3-400(A) does not allow limited liability under any circumstances. 2. Note, however, that rule 3-400's Discussion states: "Rule 3-400 is not intended to apply to customary qualifications and limitations in legal opinions and memoranda, nor is it intended to prevent a member from reasonably limiting the scope of the member's employment or representation." 3. Both require that the client be given a reasonable opportunity to seek independent counsel, not just be told it is

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		advisable. [Note: Again, Ethics 2000 appears to have come around to the California approach]
MR 1.8(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and (2) contract with a client for a reasonable contingent fee in a civil case."	1. **CAL. RULE 3-300. AVOIDING INTERESTS ADVERSE TO A CLIENT.** See above, under MR 1.8(a). 2. **CAL. B&P CODE § 6147.** See above under MR 1.5(c).	1. **CAL. RULE 3-700(D)(1)** requires that the lawyer "promptly release to the client, at the request of the client, all the client papers and property," i.e., retaining liens are not "authorized" in California.
MR 1.8(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced."	**CAL. RULE 3-120. SEXUAL RELATIONS WITH CLIENT** (A) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse. (B) A member shall not: (1) Require or demand sexual relations with a client incident to or as a condition of any professional representation; or (2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or (3) Continue representation of a client with whom the member has sexual relations if such sexual relations cause the member to perform legal services incompetently in violation of rule 3-110.	

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	(C) Paragraph (B) shall not apply to sexual relations between members and their spouses or to ongoing consensual sexual relationships which predate the initiation of the lawyer-client relationship. (D) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this rule solely because of the occurrence of such sexual relations.	
MR 1.8(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them."	No corresponding California discussion	1. MR 1.8(k) is in effect a rule of imputation. California has no such rule, imputation being covered in the case law.

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MR 1.8 COMMENTS 1. MR 1.8, Cmts. 1-4 elaborate on MR 1.8(a), business transactions with a client. Cmt. 1 notes: "A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client." Cmt. 1 notes that it applies even to matters unrelated to the representation, to lawyers engaged in selling goods & services covered under MR 5.7 (law-related services), but does not apply ordinarily to fee Ks under MR 1.5, though it may when the lawyer takes as a fee an interest in the client's business, etc. Nor does it apply when the lawyer purchases goods or services the client normally offers on the open market (e.g., banking services).	1. See **CAL. RULE 3-300, DISCUSSION ¶. 1**, which provides: "Rule 3-300 is not intended to apply to the agreement by which the member is retained by the client, unless the agreement confers on the member an ownership, possessory, security, or other pecuniary interest adverse to the client. Such an agreement is governed, in part, by rule 4-200."	
2. Cmt. 2 describes the requirements in (a)(1)-(3) and concludes: "When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable."	2. No corresponding California discussion	
3. Cmt. 3 provides that "when the client expects the lawyer to represent the client	3. No corresponding California discussion	

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in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction," the lawyer must also comply with MR 1.7 and explain his "dual role as both legal adviser and participant in the transaction," etc, and obtain the client's informed consent.		
4. Cmt. 4 in part notes: "If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel."	4. No corresponding California discussion	
5. Cmt. 5 notes that using information relating to the representation to the client's disadvantage violates the duty of loyalty and concludes: "Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3."	5. No corresponding California discussion	
6. Cmts. 6-8 elaborate on the requirements concerning gifts from clients. Cmt. 7 notes that unless the donor of a substantial gift is a relative, the donor should have the "detached advice" of an independent lawyer. Cmt. 8 notes that MR 1.8(c) does not prevent a partner or associate of the donee lawyer being	6. See **CAL. RULE 4-400, DISCUSSION**, which provides: "A member may accept a gift from a member's client, subject to general standards of fairness and absence of undue influence. The member who participates in the preparation of an instrument memorializing a gift which is otherwise permissible ought not to be	

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named as executor, trustee, etc., subject to rule 1.7(a)(2) (material limitation on that lawyer's independent professional judgment). 7. Cmt. 9 elaborates on MR 1.8(d), literary right acquisition and concludes: "Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i)." 8. Cmt. 10 elaborates on MR 1.8(e), financial assistance to clients. It explains "Lawyers may not subsidize lawsuits … brought on behalf of their clients, … because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation." Advancing court costs and litigation expenses are allowed, however, because "these advances are virtually indistinguishable from contingent fees and help ensure access to the courts." 9. Cmts. 11 & 12 discuss third-party payors under MR 1.8(f). Cmt. 11 notes: "Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such	subject to professional discipline. On the other hand, where impermissible influence occurred, discipline is appropriate. (See Magee v. State Bar (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839].)" 7. No corresponding California discussion, but see Notes & Comments re MR 1.8(d), above. 8. No corresponding California discussion (there is no discussion to rule 4-210 [Payment of Personal or Business Expenses Incurred by or for a Client] 9. No corresponding California discussion, but see **CAL. RULE 3-310, DISCUSSION ¶.11**, which provides: "Paragraph (F) is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (See San Diego Navy Federal Credit Union v. Cumis Insurance	

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representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client." Cmt. 12 notes the lawyer must conform to MR 1.7 if a conflict of interest between payor and beneficiary client actually arises.	Society (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].)"	
10. Cmt. 13 elaborates on MR 1.8(g), conflicts in making aggregate settlements, noting that MR 1.2(a) "protects each client's right to have the final say …." Cmt. 13 also notes: "Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class."	10. No corresponding California discussion, but see **CAL. RULE 3-310, DISCUSSION ¶.11**, which provides: "Paragraph (D) is not intended to apply to class action settlements subject to court approval."	
11. Cmts. 14 and 15 elaborate on MR 1.8(h), limiting malpractice liability. Cmt. 14 notes that agreements prospective malpractice liability are not allowed unless the client is independently represented, but also notes that MR 1.8(h)(1) does not prevent lawyer and client agreeing to arbitrate malpractice claims or to limit the scope of representation (though "a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.")	11. No corresponding California discussion, but see **CAL. RULE 3-400, DISCUSSION**, which provides: "Rule 3-400 is not intended to apply to customary qualifications and limitations in legal opinions and memoranda, nor is it intended to prevent a member from reasonably limiting the scope of the member's employment or representation."	

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Cmt. 15 notes that MR 1.8(h)(2) allows agreements to settle a claim or potential claim for malpractice if the lawyer complies with its requirements (advising and giving reasonable opportunity to client to seek independent counsel). 12. Cmt. 16 elaborates on MR 1.8(i), acquiring a proprietary interest in litigation, noting the exceptions for advanced costs of litigation, liens to secure cost advances ("The law of each jurisdiction determines which liens are authorized by law"), and contingent fee arrangements. 13. Cmts. 17-19 discuss MR 1.8(j), client-lawyer sexual relationships. Cmt. 17 explains the rationale for MR 1.8(j) and concludes: "Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client." Cmt. 18 notes that the prohibition does not apply to sexual relationships that predate the client-lawyer relationship. 14. Cmt. 19 notes that when the lawyer represents an organization, MR 1.8(j) prohibits the lawyer "from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer	12. No corresponding California discussion 13. See **CAL. RULE 3-120, DISCUSSION ¶. 1**, which provides: "Rule 3-120 is intended to prohibit sexual exploitation by a lawyer in the course of a professional representation. Often, based upon the nature of the underlying representation, a client exhibits great emotional vulnerability and dependence upon the advice and guidance of counsel. Attorneys owe the utmost duty of good faith and fidelity to clients. [citations omitted]. The relationship between an attorney and client is a fiduciary relationship of the very highest character and all dealings between an attorney and client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for unfairness. [citations omitted]. Where attorneys exercise undue influence over clients or take unfair advantage of clients, discipline is appropriate. [citations omitted]. In all client matters, a member is advised to keep clients' interests paramount in the course of the member's representation. 14. See **CAL. RULE 3-120, DISCUSSION ¶.2**, which provides: "For purposes of this rule, if the client is an organization, any	

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concerning the organization's legal matters." 15. Cmt. 20 explains that the prohibitions for paragraphs (a) through (i) [but not (j)] applies to all lawyers in a firm, not just the personally prohibited lawyer.	individual overseeing the representation shall be deemed to be the client. (See rule 3- 600.)" 15. No corresponding imputation rule in California.	
MR 1.9: DUTIES TO FORMER CLIENTS "(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing."	**CAL. RULE 3-310(E) AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS** * * * "(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment."	1. MR 1.9(a) expressly refers to "substantially related matter;" thus, the standard is included in the rule. Rule 3-310(E), on the other hand, refers to "confidential information material to the employment." If, under the court-created substantial relationship test the previous and current matters are deemed substantially-related, then the court presumes the lawyer is in possession of material confidential information. 2. Both rules require informed written consent. 3. *See also* **rule 3-310(B)**, discussed above in relation to MR 1.7(a)(2).
MR 1.9(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client (1) whose interests are materially adverse to that person; and (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed	**CAL. RULE 3-310(E)**, above.	1. MR 1.9(b) appears to apply to the migrating lawyer scenario. The migrating lawyer is disqualified, however, only if she actually acquired confidential information of the former firm's client and that information is material to the present matter. See MR 1.9, cmt. 5, confirming that the lawyer must have actual knowledge of the confidential information. 2. Rule 3-310(E) would appear to cover the same situation as described in MR 1.9(b). The former firm's client would have been

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consent, confirmed in writing."		the migrating lawyer's "former client," and the lawyer likely would have obtained the confidential information by "representation of the client."
MR 1.9(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client."	**CAL. B&P CODE § 6068(e)(1)** No corresponding California rule or discussion that tracks this language, *but see* **CAL. B&P CODE § 6068(e)(1)**.	
MR 1.9 COMMENTS 1. Cmt. 1 notes that "[a]fter termination of a client lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule," and gives examples of situations in which the rule's application may arise. 2. Cmt. 2 distinguishes between representations in a specific matter and representations in "recurrently handled" matters ("playbook" information): "When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with	1. No corresponding California discussion 2. No corresponding California discussion	

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materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client."		
3. Cmt. 3 explains when matters are "substantially related": "if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter," and gives specific examples (e.g., "a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce.") Cmt. 3 concludes: "A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services."	3. No corresponding California discussion, but see, e.g., H.F. Ahmanson& Co. v. Salomon Bros., Inc. (1991) 229 Cal.App.3d 1445, 1455, 280 Cal.Rptr. 614 (describing the substantial relationship test in California).	
4. Comments 4-7 address MR 1.9(b), which concerns migration of lawyers between	4. No corresponding California discussion, but see, e.g., Adams v. Aerojet-General	

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firms. **Cmt. 4** notes the competing considerations: (1) loyalty to the client should not be compromised; (2) reasonable choice of others to counsel of their choice; and (3) lawyers should not be unreasonably hampered in forming new associations. After noting that many lawyers practice in firm, Cmt. 4 states: "If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel." **Cmt. 5** notes that 1.9(b) disqualifies only those lawyers with "actual knowledge of information protected by Rules 1.6 and 1.9(c) **Cmt. 6** notes that MR 1.9(b)'s application depends on the particular facts and compares two situations: "A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose	Corp. (2001) 86 Cal.App.4th 1324, 104 Cal.Rptr.2d 116 and Frazier v. Superior Court (2002) 97 Cal.App.4th 23, 118 Cal.Rptr.2d 129, both in accord re **cmt. 5**.	

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disqualification is sought." **Cmt. 7** reminds that aside from the firm's disqualification, the moving lawyer has a duty of confidentiality concerning the MR 1.6 and 1.9(c) information he has. 5. Cmt. 8 elaborates on MR 1.9(c). 6. Cmt. 9 notes that the former client can give informed consent to allow the lawyer and/or firm to avoid disqualification.	5. No corresponding California discussion 6. No corresponding California discussion	
MR 1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE "(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm."	No corresponding California rule or discussion	1. In California, imputation is a court-created doctrine. *See, e.g.,* Hendriksen v. Great American S & L (Cal.App. 1992) 14 Cal.Rptr.2d 184; Klein v. Superior Court (1988) 198 Cal.App.3d 894, 909, 244 Cal.Rptr. 226; Cal. Bar Formal Ethics Opn. 1998-152. 2. Rule 1-100(B)(1) defines "law firm"; MR 1.0(c) also defines "law firm".
MR 1.10(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless: (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and (2) any lawyer remaining in the firm has information protected by Rules 1.6 and	No corresponding California rule or discussion	1. This rule is based on the ruling in Novo Terapeutisk Laboratorium A/S v. Baxter Travenol Laboratories, Inc. (7th Cir. 1979) 607 F.2d 186. 2. *See also* Elan Transdermal Ltd. v. Cygnus Therapeutic Systems (N.D.Cal. 1992) 809 F.Supp. 1383.

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1.9(c) that is material to the matter."		
MR 1.10(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7."	No specific corresponding California rule; principles of rule 3-310(E) probably would apply.	
MR 1.10(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11."	No corresponding California rule or discussion	
MR 1.10 COMMENTS 1. MR 1.10, Cmt. 1, defines "firm" as follows: "'firm' denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization," and notes that the determination of whether there is a firm depends on specific facts. 2. Cmt. 2 notes "can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated," and observes that ¶.(a) "operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b)." 3. Cmts. 3 and 4 elaborate on MR 1.10(a). Cmt. 3 explains MR 1.10(a) and notes	1. No corresponding California discussion but see **CAL. RULE 1-100(B)(1)** and **NOTES & COMMENTS** re MR 1.0(c), above. 2. No corresponding California discussion 3. No corresponding California discussion, but with respect to non-lawyer employees, see In re Complex Asbestos Litigation (Cal.App. 1991)283 Cal.Rptr.	

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"paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented" and gives examples. Cmt. 4 notes that MR 1.10(a) does not apply to non-lawyer employees or to a lawyer who "is prohibited from acting because of events before the person became a lawyer," but notes such persons must be screened. 4. Cmt. 5 addresses MR 1.10(b), noting that under certain circumstances a firm can be adverse to a former client in a substantially-related matter so long as there are no lawyers still in the firm with MR 1.6 or 1.9(c) information material to the present matter. 5. Cmt. 6 explains that MR 1.10(c) provides the imputation can be removed with the informed consent of the client, obtained pursuant to MR 1.7(a). 6. Cmt. 7 addresses imputation in the context of government lawyers, explaining that MR 1.11 controls. 7. Cmt. 8 explains that when a lawyer is disqualified under MR 1.8, MR 1.8(k) determines whether the disqualification is imputed to other lawyers in the firm.	732; and as to lawyer prohibited from acting because of events before she because a lawyer, see Allen v. Academic Games League of America, Inc. (C.D. Cal. 1993) 831 F.Supp. 785. 4. No corresponding California discussion, but see Elan Transdermal Ltd. v. Cygnus Therapeutic Systems (N.D. Cal. 1992) 809 F.Supp. 1383. 5. No corresponding California discussion 6. No corresponding California discussion, but see Chambers v. Superior Court (1981) 121 Cal.App.3d 893, 902-903, 175 Cal.Rptr. 575. 7. No corresponding California discussion	

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MR 1.11: SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES "(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government: (1) is subject to Rule 1.9(c); and (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation."	No corresponding California rule or discussion	1. In California, the more general provisions of rule 3-310(E) – addressing disqualifications when employment is adverse to a former client and lawyer has acquired material confidential information of that client – would apply. 2. MR 1.11(a) allows the former government client to consent to the former government employee *actually* representing new private client in the same matter; paragraph (b) provides that even if lawyer is disqualified, screening can prevent the new firm's disqualification. 3. MR 1.11 applies to a lawyer who serves as a public officer or government employee, even if that lawyer has not provided legal services in her capacity as a public officer or employee.
MR 1.11(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless: (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule."	No corresponding California rule or discussion	1. In California, screening of government lawyers is a court-created doctrine. *See, e.g.,* Chambers v. Superior Court (1981) 121 Cal.App.3d 893, 902-903, 175 Cal.Rptr. 575; Cal. Bar Formal Ethics Opn. 1993-128.
MR 1.11(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential	No corresponding California rule or discussion	

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government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term 'confidential government information' means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom."		
MR 1.11(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee: (1) is subject to Rules 1.7 and 1.9; and (2) shall not: (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or (ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is	No corresponding California rule or discussion	

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participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b)."		
MR 1.11(e) As used in this Rule, the term 'matter' includes: (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and (2) any other matter covered by the conflict of interest rules of the appropriate government agency."	No corresponding California rule or discussion	
		1. The definition of "confidential government information" has not been deleted; it has simply been moved to paragraph (c).
MR 1.11 COMMENTS 1. MR 1.11, cmt. 1 notes that a present or former government lawyer is subject to MR 1.7 and may be subject to government codes on conflict of interest, thus circumscribing to the extent to which a government agency can consent to a conflict. 2. Cmt. 2 notes that paragraph (b) sets forth a special imputation rule for former government lawyers that allows screening of the lawyer. It also notes that	1. No corresponding California discussion 2. No corresponding California discussion	

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"[b]ecause of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers."		
3. Cmt. 3 notes that "[p]aragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client," and gives examples.	3. No corresponding California discussion	
4. Cmt. 4 explains that MR 1.11 "represents a balancing of interests" between (1) avoiding an unfair advantage to a second client because of the lawyer's previous connection with the government and (2) avoiding a rule "so restrictive as to inhibit transfer of employment to and from the government" (and thus interfere with the government's interest in attracting qualified lawyers). Screening avoids the latter.	4. No corresponding California discussion, but see Chambers v. Superior Court, 121 Cal.App.3d at 898-99, 175 Cal.Rptr. at 578-79, for a discussion of the policy underlying screening for government lawyers.	
5. Cmt. 5 cautions that in some instances where the lawyer moves between different government agencies (e.g., a federal agency and a city), the two should be treated as separate clients, but also notes that MR 1.11(d) governs such situations and screening is not required.	5. No corresponding California discussion	
6. Cmt. 6 notes that the screening		

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contemplated in paragraphs (b) and (c) "do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the fee in the matter in which the lawyer is disqualified."	6. No corresponding California discussion	
7. Cmt. 7 notes that where screening is employed, "notice should be given as soon as practicable after the need for screening becomes apparent."	7. No corresponding California discussion	
8. Cmt. 8 notes that MR 1.10(c) applies only when the lawyer has actual knowledge of the information.	8. No corresponding California discussion	
9. Cmt. 9 notes that neither 1.10(a) nor (d) "prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law."	9. No corresponding California discussion	
10. Cmt. 10 states: "For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed."	10. No corresponding California discussion	

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MR 1.12: FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL "(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing."	No corresponding California rule or discussion	1. *See* Cho v. Superior Court (1995) 39 Cal. App.4th 113, 45 Cal.Rptr.2d 863 (former judge who was hired by defendant disqualified where judge had received ex parte confidential information from plaintiff while presiding over the same action, and screening would not be effective to avoid imputed disqualification of defendant's firm)
MR 1.12(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge, or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, or other adjudicative officer."	No corresponding California rule or discussion	
MR 1.12(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless: (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is promptly given to the	No corresponding California rule or discussion	

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parties and any appropriate tribunal to enable it them to ascertain compliance with the provisions of this rule."		
MR 1.12(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party."	No corresponding California rule or discussion	
MR 1.12 COMMENTS 1. MR 1.12, cmt. 1, notes that "personally and substantially" would not include a judge who was a part of a multimember court but did not participate in the matter while a judge or a judge who previously exerted only "remote or incidental administrative responsibility" over the matter. It also notes that "'adjudicative officer' includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges." Finally, it notes that Compliance Canons A(2), B(2) and C of the Model Code of Judicial Conduct correspond in meaning to MR 1.12. 2. Cmt. 2 notes that "lawyers who have served as arbitrators, mediators or other third-party neutrals" are also subject to MR 1.12, and cautions that there may be other law or codes governing TPNs. 3. Cmt. 3 notes that although TPNs do not have rule 1.6 information, they typically owe the parties a duty of confidentiality under law or ethics codes government TPNs; consequently, such lawyers must comply with MR 1.12(c).	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion	

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4. Cmt. 4 notes that the screening contemplated in paragraph (c) "does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the fee in the matter in which the lawyer is disqualified." 5. Cmt. 5 notes that where screening is employed, notice generally should be given as soon as practicable after the need for screening becomes apparent."	4. No corresponding California discussion 5. No corresponding California discussion	
MR 1.13: ORGANIZATION AS CLIENT "(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."	**CAL. RULE 3-600. ORGANIZATION AS CLIENT** "(A) In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.	1. Model Rule 1.13 was radically modified on August 11, 2003, when the ABA House of Delegates voted 239 to 147 to adopt the Corporate Responsibility Task Force's modifications to MR 1.13 that require up-the-ladder reporting (vs. the permissive up-the-ladder reporting of the former rule) and also, in new subsection (c), allow the lawyer to report confidential client information outside the client entity even if the lawyer's services had not been used in the alleged wrongful course of conduct. The changes are shown in red & underlined or struck through. 2. Rule 3-600 is no longer similar to MR 1.13
MR 1.13(B) (b) If a lawyer for an organization knows that an officer, employee or other	**CAL. RULE 3-600(B)** If a member acting on behalf of an organization knows that an	1. MR 1.13(b), as modified by the Task Force, now requires mandatory up-the-

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person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. ~~In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:~~ ~~(1) asking for reconsideration of the matter;~~ ~~(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and~~ ~~(3) referring~~ Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, ~~seriousness of the matter,~~	actual or apparent agent of the organization acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, the member shall not violate his or her duty of protecting all confidential information as provided in Business and Professions Code section 6068, subdivision (e). Subject to Business and Professions Code section 6068, subdivision (e), the member may take such actions as appear to the member to be in the best lawful interest of the organization. Such actions may include among others: (1) Urging reconsideration of the matter while explaining its likely consequences to the organization; or (2) Referring the matter to the next higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest internal authority that can act on behalf of the organization.	ladder reporting within the corporate client. 2. The suggested actions in paragraph (B) of Cal. Rule 3-600(B) are not exclusive ("Such actions *may include among others*:")

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~~referral~~ to the highest authority that can act on behalf of the organization as determined by applicable law."		
MR 1.13(C) (c) Except as provided in paragraph (d), if~~,~~ (1) despite the lawyer's efforts in accordance with paragraph (b)~~,~~ the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law ~~and is likely to result in substantial injury to the organization~~, and (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may~~:~~ ~~resign in accordance with Rule 1.16,~~ reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.	**CAL. RULE 3-600(C)** If, despite the member's actions in accordance with paragraph (B), the highest authority that can act on behalf of the organization insists upon action or a refusal to act that is a violation of law and is likely to result in substantial injury to the organization, the member's response is limited to the member's right, and, where appropriate, duty to resign in accordance with rule 3-700.	1. This is probably the most controversial amendment by the Task Force to MR 1.13. In addition to mandatory up-the-ladder reporting, MR 1.13(c) permits the lawyer to report outside the corporation if the highest authority insists on proceeding with a clear "violation of law," even if the lawyer's services are not being used. 2. An amendment to strike this provision of MR 1.13 failed by a vote of 244 to 211 in the House.
MR 1.13(D) (d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.	No corresponding California rule or discussion	

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MR 1.13(E) (e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.	No corresponding California rule or discussion	
MR 1.13(F) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing."	**CAL. RULE 3-600(D)** In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a member shall explain the identity of the client for whom the member acts, whenever it is or becomes apparent that the organization's interests are or may become adverse to those of the constituent(s) with whom the member is dealing. The member shall not mislead such a constituent into believing that the constituent may communicate confidential information to the member in a way that will not be used in the organization's interest if that is or becomes adverse to the constituent.	1. Old MR 1.13(d) has been renumbered 1.13(f).
MR 1.13(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the	**CAL. RULE 3-600 (E)** A member representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 3-310. If the organization's consent to the dual representation is required by rule 3-310, the consent shall be given by an appropriate constituent of the organization other than the	1. Old MR 1.13(e) has been renumbered 1.13(g).

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individual who is to be represented, or by the shareholders."	individual or constituent who is to be represented, or by the shareholder(s) or organization members."	
MR 1.13 COMMENTS 1. MR 1.13, Cmt. 1, provides in its entirety: "An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations." 2. Cmt. 2 provides that "[w]hen one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6," but that does not make the constituent the lawyer's client. 3. Cmt. 3 provides that, although a lawyer generally must abide by the constituents' decision on behalf of the corporation, "the lawyer must proceed as is reasonably necessary in the best interest of the organization" when he or she knows the organization is likely to be injured by an act of a constituent that is a violation of a legal obligation to the organization.	1. No corresponding California discussion, but note **CAL. RULE 3-600(A)**, which expressly states the corporate client acts "through its highest authorized officer, employee, body, or constituent overseeing the particular engagement." 2. No corresponding California discussion 3. No corresponding California discussion	1. NOTE: as of 8/16/2003, this cmt. has not been rewritten to reflect the compromise entered into at the 8/2003 ABA Annual Meeting to limit the standard to actual knowledge.

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"Knowledge" is defined in MR 1.0(f) and "can be inferred from circumstances, and a lawyer cannot ignore the obvious." [NOTE: *as of 8/16/2003, this cmt. has not been rewritten to reflect the compromise entered into at the 8/2003 ABA Annual Meeting to limit the standard to actual knowledge*.]		
4. New cmt. 4 states in part: "In determining how to proceed under Paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations." It also states, "If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization." Finally, it also states: "Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization." See, however, subsection (c), above.	4. No corresponding California discussion	
5. Cmt. 5 (part new, part old cmt. 4) states: "Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that	5. No corresponding California discussion	

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can act on behalf of the organization under applicable law." It also notes that the highest authority will usually be the board of directors.		
6. Cmt. 6 (part new, part old cmt. 5) notes that MR 1.13 "does not limit or expand the lawyer's responsibility under Rule 1.8, 1.16, 3.3 or 4.1," [Note that in this version, reference to MR 1.6 has been deleted, see subsection (c), above], and that rule 1.2(d) may apply if the lawyer's services are being used to commit a crime. It also elaborates on subsection (c) by stating: "Under Paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization."	6. No corresponding California discussion	
7. New cmt. 7 elaborates on paragraph (d), which provides paragraph (c) does not apply in situations where a lawyer has been retained by the corporation to defend it, and notes: "This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim."	7. No corresponding California discussion	

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8. New cmt. 8 for the most part describes paragraph (e), which provides that a lawyer discharged for actions the lawyer takes under paragraphs (b) or (c) must takes necessary steps to inform the highest authority in the corporation.	8. No corresponding California discussion	
9. Cmt. 9 (old cmt. 6) notes that MR 1.13 applies to governmental organizations, but states "Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules." It adds that "the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole." Cmt. 6 also notes that "a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved."	9. No corresponding California discussion	
10. Cmt. 10 (old cmt. 7) states in part that "the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation." Cmt. 11 (old cmt. 8) says such a warning depends on each case's facts. 11. Cmt. 12 (old cmt. 9) states the organization's lawyer may also represent an officer or major shareholder. 12. Cmt. 13 (old cmt. 10) and cmt. 14 (old	10. No corresponding California discussion 11. See **CAL. RULE 3-600, DISCUSSION ¶. 2**, which provides: "Rule 3-600 is not intended to prohibit members from representing both an organization and other parties connected with it, as for instance (as simply one example) in establishing employee benefit packages for closely held corporations or professional partnerships." 12. See **CAL. RULE 3-600, DISCUSSION ¶. 2**,	

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cmt. 11) consider derivative actions. Cmt. 14 describes the possible conflicts that can arise in such actions between the lawyer's duty to the organization and the lawyer's relationship with the board."	which provides: "Rule 3-600 is not intended to create or to validate artificial distinctions between entities and their officers, employees, or members, nor is it the purpose of the rule to deny the existence or importance of such formal distinctions. In dealing with a close corporation or small association, members commonly perform professional engagements for both the organization and its major constituents. When a change in control occurs or is threatened, members are faced with complex decisions involving personal and institutional relationships and loyalties and have frequently had difficulty in perceiving their correct duty. [citations omitted] In resolving such multiple relationships, members must rely on case law."	
MR 1.14: CLIENT WITH DIMINISHED CAPACITY "(a) When a client's capacity to make adequately considered decisions in connection with the a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."	No corresponding California rule or discussion	
MR 1.14(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken	No corresponding California rule or discussion	1. *See* Cal. Bar Formal Ethics Opn. 1989-112; L.A. County Bar Ethics Opn. 450 (stating that disclosure of the client's disability would violated B&P Code §

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and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian."		6068(e).
MR 1.14(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests."	No corresponding California rule or discussion	1. *See* note 1, above.

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MR 1.14 COMMENTS 1. MR 1.14, cmt. 1, notes that "[w]hen the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects," but also notes that there is a range of capacity, with some having "no power to make legally binding decisions," while others still retain "the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being." 2. Cmt. 2 notes that a lawyer must treat the client with attention and respect despite a client's diminished capacity. 3. Cmt. 3 notes that although family members may be present, it generally does not affect the attorney-client privilege, but the lawyer must still look primarily to the client to make decisions. 4. Cmt. 4 provides guidance in different situations where a legal representative (e.g., a guardian) has already been appointed for the client. 5. Cmt. 5 elaborates on when the lawyer may take action when the client is at risk of substantial harm, physical, financial or otherwise. Where a normal client-lawyer relationship cannot be maintained per paragraph (a) because the client can't communicate or make decisions, "paragraph (b) permits the lawyer to take protective measures deemed necessary," including "consulting with family members, . . . using voluntary surrogate	No corresponding California discussion for any of the Comments to MR 1.14.	

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decisionmaking tools such as durable powers of attorney or consulting with support groups," etc. 6. Cmt. 6 explains how a lawyer might determine the extent of the client's diminished capacity, considering and balancing "such factors as the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision," etc. 7. Cmt. 7 provides guidance on how a lawyer might consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. It concludes: "Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client." 8. Cmt. 8 elaborates on what the lawyer may do with respect to disclosing the client's condition when taking protective action under MR 1.14(b). Any such disclosures are governed by MR 1.14(c). 9. Cmts. 9 & 10 explain how a lawyer should proceed in an "emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm."		

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MR 1.15: SAFEKEEPING PROPERTY "(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation."	**CAL. RULE 4-100(A) PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT** "(A) All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labelled "Trust Account," "Client's Funds Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction.	
MR 1.15(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose."	**CAL. RULE 4-100(A), continued]** No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith except as follows: (1) Funds reasonably sufficient to pay bank charges. (2) In the case of funds belonging in part to a client and in part presently or potentially to the member or the law firm, the portion belonging to the member or law firm must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of the member or law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved."	

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MR 1.15(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred."	**CAL. RULE 4-100(A)** All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labelled "Trust Account," "Client's Funds Account" or . . . ."	1. Rule 4-100 does not expressly require that a lawyer deposit advance fees in the client trust account. 2. See Baranowski v. State Bar (1979) 24 Cal.3d 153, 154 Cal.Rptr. 752.
MR 1.15(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property."	**CAL. RULE 4-100(B)** A member shall: (1) Promptly notify a client of the receipt of the client's funds, securities, or other properties. (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable. (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties; and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar. (4) Promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive."	1. Rule 4-100 does not provide for notice to third persons.
MR 1.15(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the) claim interests, the	No corresponding California rule or discussion	

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property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute."		
No corresponding Model Rule	**CAL. RULE 4-100(C)** The Board of Governors of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by members and law firms in accordance with subparagraph (B)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members."	
MR 1.15 COMMENTS 1. MR 1.15, cmt. 1, explains how lawyers should hold property of others, e.g., "[s]ecurities should be kept in a safe deposit box," and notes that all property of clients and third persons "must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts." Cmt. 1 concludes the lawyer should keep books "in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order." 2. Cmt. 2 notes it is allowed to commingle the lawyer's and client's funds "to pay bank service charges on [the trust] account." 3. Cmt. 3 provides that in the event of a dispute over funds from which the lawyer's fee is paid, the "disputed portion of the funds must be kept in a trust	**CAL. RULE 4-100, STANDARDS** 1. With respect to securities, see **CAL. RULE 4-100(B)(2)** and **CAL. RULE 4-100, STANDARD (2)**. No corresponding California discussion re "accounting practice" statement; rule 4-100(B)(3) speaks of rendering "appropriate accounts to the client." 2. No corresponding California discussion 3. No corresponding California discussion, but see **CAL. RULE 4-100(A)(2)**	

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account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed. 4. Cmt. 4 provides in part that where third parties may have a claim on client funds, "[a] lawyer may have a duty under applicable law to protect such third party claims against wrongful interference by the client," but when there are substantial grounds for dispute, "the lawyer may file an action to have a court resolve the dispute." 5. Cmt. 5 provides that "[t]he obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services." 6. Cmt. 6 notes that where a "lawyers' fund for client protection" has been established, "a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate."	4. No corresponding California discussion 5. No corresponding California discussion 6. No corresponding California discussion	

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MR 1.16: DECLINING OR TERMINATING REPRESENTATION "(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or (3) the lawyer is discharged."	**CAL. RULE 3-700(B). TERMINATION OF EMPLOYMENT** * * * (B) Mandatory Withdrawal. A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if: (1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or (2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or (3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.	
MR 1.16(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; (3) the client has used the lawyer's	**CAL. RULE 3-700(C)** Permissive Withdrawal. If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because: (1) The client (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an	

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services to perpetrate a crime or fraud; (4) a the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists."	extension, modification, or reversal of existing law, or (b) seeks to pursue an illegal course of conduct, or (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or (f) breaches an agreement or obligation to the member as to expenses or fees. (2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or (3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or (4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or (5) The client knowingly and freely assents to termination of the employment; or (6) The member believes in good faith, in	

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	a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.	
MR 1.16(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation."	**CAL. RULE 3-700(A)(1)** In General. (1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.	
MR 1.16(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."	**CAL. RULE 3-700(A)(2)** In General. * * * (2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules. **CAL. RULE 3-700(D)** Papers, Property, and Fees. A member whose employment has terminated shall: (1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client papers and property. "Client papers and property" includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to the client's	

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	representation, whether the client has paid for them or not; and (2) Promptly refund any part of a fee paid in advance that has not been earned. This provision is not applicable to a true retainer fee which is paid solely for the purpose of ensuring the availability of the member for the matter.	
MR 1.16 COMMENTS 1. MR 1.16, cmt. 1, provides in part: "A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion." 2. Cmts. 2 and 3 address mandatory withdrawal. Cmt. 2 provides that while a lawyer must decline or withdraw if the client demands the lawyer violate law or the rules, "[t]he lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation." Cmt. 3 notes withdrawing under Cmt. 2 circumstances can create difficulty. If asked by the court the reason, cmt. 2 observes "[t]he lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient," and further notes "[l]awyers should be mindful of their obligations to both clients and the court under Rules 1.6 [confidentiality] and 3.3 [candor with	**CAL. RULE 3-700 DISCUSSION** 1. No corresponding California discussion 2. No corresponding California discussion	

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tribunal]." 3. Cmts. 4-6 deal with "discharge" of the lawyer. Cmt. 4 states "[a] client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services." Cmt. 5 addresses the situation where a client may seek to discharge appointed counsel, and notes the client "should be given" an explanation of the consequences, including that "appointing authority [may decide] that appointment of successor counsel is unjustified." Cmt. 6 notes a client with "severely diminished capacity … may lack the legal capacity to discharge the lawyer," and notes "the lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action." 4. Cmts. 7 & 8 address optional withdrawal. Cmt. 7 notes the lawyer's has an option in certain situations, including "if it can be accomplished without material adverse effect on the client's interests." Cmt. 8 notes the lawyer has an option "if the client refuses to abide by the terms of an agreement relating to the representation [e.g., fees]." 5. Cmt. 9 notes that "[e]ven if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client."	3. No corresponding California discussion, but as to cmt. 4 see Fracasse v. Brent (1972) 6 Cal.3d 784, 494 P.2d 9, 100 Cal.Rptr. 385. 4. See rule 3-700, Discussion ¶.1, which provides: "Subparagraph (A)(2) provides that "a member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the clients." What such steps would include, of course, will vary according to the circumstances. Absent special circumstances, "reasonable steps" do not include providing additional services to the client once the successor counsel has been employed and rule 3-700(D) has been satisfied." 5. No corresponding California discussion	

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MR 1.17: SALE OF LAW PRACTICE "A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied: (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;	**CAL. RULE 2-300. SALE OR PURCHASE OF A LAW PRACTICE OF A MEMBER, LIVING OR DECEASED** All or substantially all of the law practice of a member, living or deceased, including goodwill, may be sold to another member or law firm subject to all the following conditions: No language corresponding to paragraph (a)	1. Ethics 2000 proposed, and the House of Delegates adopted, an amendment to rule 1.17 that would allow sale of an "area of practice." 2. Question whether California would ever allow the breadth of restriction on practice ("jurisdiction," which would encompass an entire state) as set out in paragraph (a). *See* **CAL. B&P CODE 16602** [allowing a partner to agree he or she "will not carry on a similar business *within a specified county or counties, city or cities, or a part thereof*, where the partnership business has been transacted." (emphasis added)]; **CAL.RULE 1-500**.
MR 1.17(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;	No language corresponding to paragraph (b)	
MR 1.17(c) The seller gives written notice to each of the seller's clients regarding: (1) the proposed sale; (2) the client's right to retain other counsel or to take possession of the file; and (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court	**CAL. RULE 2-300 (B)** If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by Business and Professions Code section 6068, subdivision (e), then; (1) If the seller is deceased, or has a conservator or other person acting in a representative capacity, and no member has been appointed to act for the seller pursuant to Business and Professions Code section 6180.5, then prior to the transfer; (a) the purchaser shall cause a written notice to be given to the client stating that the interest in the law practice is being	

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having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.	transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client papers and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client. Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements, and (b) the purchaser shall obtain the written consent of the client provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller, or the client's rights would be prejudiced by a failure to act during such 90-day period. (2) In all other circumstances, not less than 90 days prior to the transfer; (a) the seller, or the member appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall cause a written notice to be given to the client stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to	

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	retain other counsel; that the client may take possession of any client papers and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, the purchaser may act on behalf of the client until otherwise notified by the client. Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements, and (b) the seller, or the member appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall obtain the written consent of the client prior to the transfer provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller.	
MR 1.17(d) The fees charged clients shall not be increased by reason of the sale."	**CAL. RULE 2-300(A)** Fees charged to clients shall not be increased solely by reason of such sale.	
	CAL. RULE 2-300(C) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member shall be taken. **CAL. RULE 2-300(D)** All activity of a purchaser or potential purchaser under this rule shall be subject to compliance with rules 3-300 and 3-310 where applicable. **CAL. RULE 2-300(E)** Confidential information	

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	shall not be disclosed to a non-member in connection with a sale under this rule. **CAL. RULE 2-300(F)** Admission to or retirement from a law partnership or law corporation, retirement plans and similar arrangements, or sale of tangible assets of a law practice shall not be deemed a sale or purchase under this rule.	
MR 1.17 COMMENTS 1. MR 1.17, cmt. 1, notes that "[t]he practice of law is a profession, not merely a business," and that "[c]lients are not commodities that can be purchased an sold at will," but that lawyers can obtain compensation for the reasonable value of a practice when ceasing the practice or area or practice. 2. Cmt. 2 notes that "[t]he fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere" is not a violation." Similarly, an unanticipated return to private practice is not a violation (e.g., judge who loses election). 3. Cmt. 3 notes the requirement that seller stop private practice does not prohibit lawyer from employment in public agency or legal services entity. 4. Cmt. 4 notes the rule applies to lawyer who retires from practice "within the jurisdiction," so lawyer could move to another state to practice. It also notes that large states may permit sale of practice coupled with movement to	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion 4. No corresponding California discussion	

ETHICS 2000 RULE	CALIFORNIA RULE COUNTERPART (IF ANY)	NOTES & COMMENTS
different area of state. 5. Cmt. 5 addresses the sale of an "area of practice," and notes that "the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e)." Lawyer can continue to practice within jurisdiction in areas of practice not sold. 6. Cmt. 6 explains that the requirement of selling the entire practice or area of practice "protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel …" No violation, however, if buyer cannot take some clients because of conflict. 7. Cmt. 7 notes that preliminary discussions re sale do not violate MR 1.6, but "[p]roviding the purchaser access to client-specific information relating to the representation and to the file … requires client consent." Cmt. 7 further notes that If client does not respond within 90 days to written notice, consent is presumed. 8. Cmt. 8 addresses situation when some clients cannot be given "actual notice" of the purchase. Cmt. 8 notes that for such clients, the lawyer must obtain a court order, usually after an in camera proceeding to protect confidentiality, before transferring the file. 9. Cmt. 9 notes that client autonomy, including right to discharge the lawyer,	5. No corresponding California discussion 6. No corresponding California discussion, but note rule 3-700, Discussion ¶.2, which provides: "'All or substantially all of the law practice of a member' means, for purposes of rule 2-300, that, for example, a member may retain one or two clients who have such a longstanding personal and professional relationship with the member that transfer of those clients' files is not feasible. Conversely, rule 2-300 is not intended to authorize the sale of a law practice in a piecemeal fashion except as may be required by subparagraph (B)(1)(a) or paragraph (D)." 7. No corresponding California discussion, but note rule 3-700(E), which provides: "Confidential information shall not be disclosed to a non-member in connection with a sale under this rule." As to cmt. 7, see 3-700(B)(1)(b) and (B)(2)(b). 8. No corresponding California discussion 9. No corresponding California discussion 10. See rule 3-700, Discussion ¶.1, which provides: "Paragraph (A) is intended to prohibit the purchaser from charging the former clients of the seller a higher fee than the purchaser is charging his or her existing clients." 11. See rule 3-700(D), which provides: "All	

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survive sale. 10. Cmt. 10 notes that the buyer cannot finance the purchase through increased fees. 11. Cmt. 11 notes that lawyers involved in sale of practice are subject to ethical standards re involving another lawyer to represent a client, e.g.., seller must exercise competence in identifying buyer qualified to assume practice, and buyer must, inter alia, avoid disqualifying conflicts. 12. Cmt. 12 notes that lawyers must comply with tribunal requirements for substitutions. 13. Cmt. 13 discusses applicability of rule when a non-lawyer representative sells deceased lawyer's practice: although it doesn't apply to non-lawyer, the purchasing lawyer must comply. 14. Cmt. 14 notes the rule does not apply to admission to or retirement from a law practice, nor to sale of tangible assets of the practice. 15. Cmt. 15 notes the rule does not apply to transfers of legal representation between lawyers when no sale of practice.	activity of a purchaser or potential purchaser under this rule shall be subject to compliance with rules 3-300 and 3-310 where applicable." 12. No corresponding California discussion, but see rule 3-700(C), which provides: "If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member shall be taken." 13. See rule 3-700, Discussion ¶.3, which provides: "Payment of a fee to a non-lawyer broker for arranging the sale or purchase of a law practice is governed by rule 1-320." 14. No corresponding California discussion, but note rule 3-700(F), which provides: "(F) Admission to or retirement from a law partnership or law corporation, retirement plans and similar arrangements, or sale of tangible assets of a law practice shall not be deemed a sale or purchase under this rule." 15. See rule 3-700, Discussion ¶.3, which provides in part: "Transfer of individual client matters, where permitted, is governed by rule 2- 200."	

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MR 1.18: DUTIES TO PROSPECTIVE CLIENT "(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client."	No corresponding California rule or discussion	
MR 1.18(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client."	No corresponding California rule or discussion	1. See Evid. Code § 951, which defines "client" for purposes of the attorney-client privilege as one who consults with a lawyer, even if no attorney-client relationship results.
MR 1.18(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d)."	No corresponding California rule or discussion	
MR 1.18(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if: (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or: (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying	No corresponding California rule or discussion	

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information than was reasonably necessary to determine whether to represent the prospective client; and (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (ii) written notice is promptly given to the prospective client."		
MR 1.18 COMMENTS 1. MR 1.18, cmt. 1, notes that "[a] lawyer's discussions with a prospective client usually are limited in time and depth," and so "prospective clients should receive some but not all of the protection afforded clients." 2. Cmt. 2 notes that "[a] person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a 'prospective client'" under paragraph (a). 3. Cmt. 3 notes that where a prospective client has revealed information to allow the lawyer to determine whether there is a conflict, paragraph (b) prohibits the lawyer from using or revealing the information. 4. Cmt. 4 notes that to avoid obtaining disqualifying information, "a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose," and notes that if a conflict	No corresponding California discussion for any of the Comments to MR 1.18.	

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exists but consent is possible under MR 1.7, "consent from all affected present or former clients must be obtained …." 5. Cmt. 5 states in part: "A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter." 6. Cmt. 6 notes that even if there is no agreement under paragraph (c), a lawyer can represent a client adverse to the prospective client in the same matter "unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter." 7. Cmt. 7 notes that the prohibition imputed under (c) may be avoided under (d)(1) "if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients," or under (d)(2) with a timely screen of the disqualified lawyer. 8. Cmt. 8 notes that notice "should be given as soon as practicable after the need for screening becomes apparent." 9. Cmt. 9 refers to MR 1.1 re lawyer's duty of competence to prospective client, and to MR 1.15 re lawyer's duties when such a client entrusts valuables or papers to the lawyer.		

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MR 2.1: ADVISOR "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."	No corresponding California rule or discussion	1. See discussion re rule 3-110 in relation to MR 1.1, above.. 2. Advice will usually be part of legal services provided to client. 3. See also rule 3-210, discussed in relation to MR 1.2(d), above.
MR 2.1 COMMENTS 1. MR 2.1, Cmt. 1, notes that a client is entitled to "straightforward advice," and concludes "a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client." 2. Cmt. 2 notes that "[p]urely technical legal advice can sometimes be inadequate," and also states "It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice." 3. Cmt. 3 notes that strictly technical advice may be appropriate for "a client experienced in legal matters," but the lawyer may need to indicate "that more may be involved than strictly legal considerations" when "a client inexperienced in legal matters." 4. Cmt. 4 notes that "[m]atters that go beyond strictly legal questions may also be in the domain of another profession," but also notes that "a lawyer's advice at its best often consists of recommending a	No corresponding California discussion for any of the Comments to MR 2.1.	

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course of action in the face of conflicting recommendations of experts." 5. Cmt. 5 discusses that at times, "a lawyer may initiate advice to a client when doing so appears to be in the client's interest," and gives examples.		
MR 2.2: NONE		
MR 2.3: EVALUATION FOR USE BY THIRD PERSONS "(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client."	No corresponding California rule or discussion for any paragraph of MR 2.3	
MR 2.3(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent."		
MR 2.3(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6."		
MR 2.3 COMMENTS 1. MR 2.3, cmt. 1, identifies common situations that may trigger the rule. 2. Cmt. 2 cautions that "[a] legal evaluation	No corresponding California discussion for any of the Comments to MR 2.3.	

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should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship," and explains "question is whether the lawyer is retained by the person whose affairs are being examined." Thus, "it is essential to identify the person by whom the lawyer is retained." 3. Cmt. 3 notes that when the evaluation is for the use or information of a third person, a legal duty may arise, but "[t]hat legal question is beyond the scope of this Rule." Cmt. 3 also cautions that the lawyer should ascertain whether making the evaluation "is compatible with other functions undertaken in behalf of the client." 4. Cmt. 4 discusses the scope of the investigation agreed to and notes that if the client does not cooperate, then "the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances," but under no circumstances may the lawyer "knowingly make a false statement of material fact or law in providing an evaluation …." 5. Cmt. 5 notes in part that "[i]nformation relating to an evaluation is protected by Rule 1.6." 6. Cmt. 6 states: "When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's		

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response may be made in accordance with procedures recognized in the legal profession," and refers to ABA policy.		
MR 2.4: LAWYER SERVING AS THIRD-PARTY NEUTRAL "(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter."	**CAL. RULE 1-710. MEMBER AS TEMPORARY JUDGE, REFEREE, OR COURT-APPOINTED ARBITRATOR** A member who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject under the Code of Judicial Ethics to Canon 6D, shall comply with the terms of that canon.	
MR 2.4(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client."	No corresponding California rule or discussion	
MR 2.4 COMMENTS 1. MR 2.4, cmt. 1, defines a "third-party neutral" ("TPN") as "a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction." 2. Cmt. 2 notes that while the TPN role is not unique to lawyers, only they are	1. No corresponding California discussion 2. No corresponding California discussion, but see rule 1-710, which requires	

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allowed in some court-connected contexts, and notes that lawyers may be subject to various court rules and ethics codes when functioning as a TPN. 3. Cmt. 3 elaborates on paragraph (b) and cautions that a lawyer TPN must be careful to avoid confusing the parties about the lawyer's role. Cmt. 3 concludes: "The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected." 4. Cmt. 4 states that conflict situations involving a lawyer serving as a TPN are governed by MR 1.12. 5. Cmt. 5 notes that lawyers who represent clients in dispute resolution processes are governed by the Rules of Professional Conduct. Concerning duty of candor, in binding arbitration, MR 3.3 applies; for other TPNs, MR 4.1 governs.	members serving as TPNs to comply with judicial canons. 3. No corresponding California discussion 4. No corresponding California discussion 5. No corresponding California discussion, but note Rule 1-710, Discussion ¶.1 that provides: "This rule is intended to permit the State Bar to discipline members who violate applicable portions of the Code of Judicial Ethics while acting in a judicial capacity pursuant to an order or appointment by a court."	
MR 3.1: MERITORIOUS CLAIMS AND CONTENTIONS "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an	**CAL. RULE 3-200. PROHIBITED OBJECTIVES OF EMPLOYMENT** "A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is: (A) To bring an action, conduct a defense, assert a position in litigation, or take an	1. The second sentence in MR 3.1 finds its counterpart in the last clause of § 6068(c). 2. MR 3.1, cmt. 1, recognizes that "in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for

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extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established."	appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or (B) To present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of such existing law." **CAL. B&P CODE §6068(c), (g). DUTIES OF ATTORNEY** "It is the duty of an attorney to do all of the following: * * * (c) To counsel or maintain such actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense. * * * (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest."	change." 3. MR 3.1, cmt. 3, recognizes that the rule is subordinate to federal or state constitutional law concerning a defendant's rights in a criminal matter. 4. Both MR 3.1 and rule 3-200 provide a lawyer may make a good faith argument for an extension, modification, or reversal of such existing law.

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MR 3.1 COMMENTS 1. MR 3.1, cmt. 1 notes "[t]he advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure," but also notes "the law is not always clear," and "account must be taken of the law's ambiguities and potential for change." 2. Cmt. 2 provides in part: "What is required of lawyers … is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail." 3. Cmt. 3 notes that the rule is subordinate to constitutional law that allows a lawyer to assist a criminal defendant by presenting a claim or contention the rule prohibits.	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion	

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MR 3.2: EXPEDITING LITIGATION "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."	**CAL. B&P CODE §6128. DECEIT, COLLUSION, DELAY OF SUIT AND IMPROPER RECEIPT OF MONEY AS MISDEMEANOR** Every attorney is guilty of a misdemeanor who either: * * * (b) Willfully delays his client's suit with a view to his own gain.	1. Although § 6128(b) does not track the language of MR 3.2 (a prohibition on willful delay is not the same as an affirmative duty to "expedite"), California does appear to be concerned with delay in litigation.
MR 3.2 COMMENTS 1. MR 3.2, cmt. 1, states "dilatory practices bring the administration of justice into disrepute," and notes that to determine whether an action is proper, "[t]he question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay."	1. No corresponding California discussion	
MR 3.3: CANDOR TOWARD THE TRIBUNAL "a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or	**CAL. RULE 5-200. TRIAL CONDUCT** "In presenting a matter to a tribunal, a member: (A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth; (B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law; (C) Shall not intentionally misquote to a tribunal the language of a book, statute, or decision; (D) Shall not, knowing its invalidity, cite as authority a decision that has been overruled	

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	or a statute that has been repealed or declared unconstitutional; and (E) Shall not assert personal knowledge of the facts at issue, except when testifying as a witness." **CAL. B&P CODE §6068(d). DUTIES OF ATTORNEY** It is the duty of an attorney …: * * * (d) To employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.	
MR 3.3(a)(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false."	There is no corresponding rule in California requiring a lawyer to take remedial measures if the lawyer learns that his client or one of his witnesses has offered false material evidence, but see **CAL. RULE 5-200 & CAL. B&P CODE § 6068(d)**, *above*, and **CAL. RULE 5-220,** in NOTES & COMMENTS.	1. **CAL. RULE 5-220. SUPPRESSION OF EVIDENCE** "A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce."
MR 3.3(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."	No corresponding California rule or discussion, but see **CAL. B&P CODE § 6128(a)**, in **NOTES & COMMENTS**..	1. **CAL. B&P CODE § 6128. DECEIT, COLLUSION, DELAY OF SUIT AND IMPROPER RECEIPT OF MONEY AS MISDEMEANOR** "Every attorney is guilty of a misdemeanor who either: (a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with

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		intent to deceive the court or any party."
MR 3.3(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6."	No corresponding California rule or discussion	
MR 3.3(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse."	**CAL. RULE 5-300. CONTACT WITH OFFICIALS** * * * "(B) A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except: (1) In open court; or (2) With the consent of all other counsel in such matter; or (3) In the presence of all other counsel in such matter; or (4) In writing with a copy thereof furnished to such other counsel; or (5) In ex parte matters."	1. MR 3.3(d) imposes on the lawyer a special duty of candor in ex parte proceedings to ensure the judge makes an informed decision. Rule 5-300(B)(5) simply permits a lawyer to communicate with a judge in an ex parte matter.
MR 3.3 COMMENTS 1. MR 3.3, cmt. 1, applies to lawyers before a tribunal or in an ancillary proceeding of the tribunal (e.g., deposition). 2. Cmt. 2 states in part that "although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that	1. No corresponding California discussion 2. No corresponding California discussion	

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the lawyer knows to be false."		
3. Cmt. 3 notes that although most litigation documents present assertions by the client and thus do not require the lawyer's personal knowledge, "an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry," and cross-references MR 1.2(d) [prohibits counseling client fraud] and MR 8.4(b) [prohibits lawyer's criminal act reflecting dishonesty, etc.]	3. No corresponding California discussion	
4. Cmt. 4 states: "Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal," and elaborates on 3.3(a)(2).	4. No corresponding California discussion	
5. Cmt. 5 addresses 3.3(a)(3) [offering false evidence] and notes the "duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence."	5. No corresponding California discussion	
6. Cmt. 6 addresses the client who intends to testify falsely or introduce false evidence. If the lawyer fails to persuade the client otherwise, "and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence." Cmt. 6 also states that if only part of the testimony is false, the lawyer may call the witness but "may not elicit or otherwise permit the witness to present the testimony …."	6. No corresponding California discussion	

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7. Cmt. 7 notes that 3.3(a) and (b) also apply to criminal defense counsel, but where a jurisdiction requires counsel "to present the accused as a witness or to give a narrative statement if the accused so desires," that law supersedes the rule.	7. No corresponding California discussion	
8. Cmt. 8 states: "A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances," and while doubts should be resolved in the client's favor, "the lawyer cannot ignore an obvious falsehood."	8. No corresponding California discussion	
9. Cmt. 9 notes that while 3.3(a)(3) only prohibits the lawyer from offering evidence he *knows* is false, "it *permits* the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false," (Emphasis added), but this does not apply when representing a criminal defendant.	9. No corresponding California discussion	
10. Cmt.s 10 and 11 address remedial measures. Cmt. 10 notes that if the lawyer learns that evidence or testimony already offered is false, he "must take reasonable remedial measures." Cmt. 10 provides the lawyer must first remonstrate with the client, but if that fails, seek to withdraw, but if not allowed or if it "will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information	10. No corresponding California discussion	

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that otherwise would be protected by Rule 1.6."		
11. Cmt. 11 observes that "disclosure of a client's false testimony can result in grave consequences to the client" (e.g., prosecution for perjury), but that "the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement." Cmt. 11 also explains that unless the lawyer can disclose, the client can reject the lawyer's advice and "in effect coerce the lawyer into being a party to fraud on the court."	11. No corresponding California discussion	
12. Cmt. 12 explains the rationale underlying 3.3(b), i.e., that "Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding," etc.	12. No corresponding California discussion	
13. Cmt. 13 notes that "[t]he conclusion of the proceeding is a reasonably definite point for the termination of the obligation" to rectify false evidence, statements or testimony.	13. No corresponding California discussion	
14. Cmt. 14 notes that in an ex parte proceeding, "[t]he judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of	14. No corresponding California discussion	

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material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision." 15. Cmt. 15 notes that although a lawyer does not necessarily have to withdraw from representing a client who will be adversely affected by his candor, the lawyer may be required under MR 1.16(a) to seek to withdraw "if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client."	15. No corresponding California discussion	
MR 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL "A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;"	**CAL. RULE 5-220. SUPPRESSION OF EVIDENCE** "A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce." **CAL. B&P CODE §6068(d). DUTIES OF ATTORNEY** "It is the duty of an attorney …: * * * (d) To employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."	
MR 3.4(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by	**CAL. RULE 5-310. PROHIBITED CONTACT WITH WITNESSES** A member shall not:	1. *See also* **CAL. B&P CODE § 6068(d)**.

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law;"	* * * "(B) Directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a member may advance, guarantee, or acquiesce in the payment of: (1) Expenses reasonably incurred by a witness in attending or testifying. (2) Reasonable compensation to a witness for loss of time in attending or testifying. (3) A reasonable fee for the professional services of an expert witness."	
MR 3.4(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;"	**CAL. B&P CODE §6068(b). DUTIES OF ATTORNEY** "It is the duty of an attorney to do all of the following: * * * (b) To maintain the respect due to the courts of justice and judicial officers."	
MR 3.4(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;"	No corresponding California rule or discussion	
MR 3.4(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil	**CAL. RULE 5-200. TRIAL CONDUCT** "In presenting a matter to a tribunal, a member: (A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth;	

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litigant or the guilt or innocence of an accused; or	(B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law; * * * (E) Shall not assert personal knowledge of the facts at issue, except when testifying as a witness."	
MR 3.4(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless: (1) the person is a relative or an employee or other agent of a client; and (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information."	**CAL. RULE 5-310. PROHIBITED CONTACT WITH WITNESSES** "A member shall not: (A) Advise or directly or indirectly cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making that person unavailable as a witness therein."	1. *See also* **CAL. RULE 5-220** ("Suppression of Evidence")
MR 3.4 COMMENTS 1. MR 3.4, cmt. 1 notes that although evidence is "marshaled competitively," "[f]air competition in the adversary system is secured by prohibitions against destruction or concealment of evidence," etc. 2. Cmt. 2 notes that the opposing party's right to obtain evidence through discovery is important, so paragraph (a) prohibits destruction or falsifying of evidence. Cmt. 2 also states that 3.4(a) applies to computerized information. Finally, cmt. 2 also notes that applicable law may allow lawyer to take possession of physical evidence of client crimes for limited examination and may require the lawyer to turn it over to authorities. 3. Cmt. 3 notes that under 3.4(b), "it is not	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion	

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improper to pay a witness's expenses or to compensate an expert on terms permitted by law.," though in most jurisdictions, cannot pay witness for testifying or expert a contingent fee. 4. Cmt. 4 notes that 3.4(f) allows lawyer to advise clients to refrain from giving information to a third party.	4. No corresponding California discussion	
MR 3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL "A lawyer shall not: (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;"	**CAL. RULE 5-300(A). CONTACT WITH OFFICIALS** "(A) A member shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the member and the judge, official, or employee is such that gifts are customarily given and exchanged. Nothing contained in this rule shall prohibit a member from contributing to the campaign fund of a judge running for election or confirmation pursuant to applicable law pertaining to such contributions.	
MR 3.5(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;"	**CAL. RULE 5-300 (B)** A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except: (1) In open court; or (2) With the consent of all other counsel in such matter; or (3) In the presence of all other counsel in such matter; or (4) In writing with a copy thereof furnished	

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	to such other counsel; or (5) In ex parte matters. (C) As used in this rule, "judge" and "judicial officer" shall include law clerks, research attorneys, or other court personnel who participate in the decision-making process."	
MR 3.5(c) communicate with a juror or prospective juror after discharge of the jury if: (1) the communication is prohibited by law or court order; (2) the juror has made known to the lawyer a desire not to communicate; or (3) the communication involves misrepresentation, coercion, duress or harassment; or"	**CAL. RULE 5-320. CONTACT WITH JURORS** (A) A member connected with a case shall not communicate directly or indirectly with anyone the member knows to be a member of the venire from which the jury will be selected for trial of that case. (B) During trial a member connected with the case shall not communicate directly or indirectly with any juror. (C) During trial a member who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the member knows is a juror in the case. (D) After discharge of the jury from further consideration of a case a member shall not ask questions of or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror's actions in future jury service. (E) A member shall not directly or indirectly conduct an out of court investigation of a person who is either a member of the venire or a juror in a manner likely to influence the state of mind of such person in connection with present or future jury service. (F) All restrictions imposed by this rule also apply to communications with, or	

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	investigations of, members of the family of a person who is either a member of the venire or a juror. (G) A member shall reveal promptly to the court improper conduct by a person who is either a member of a venire or a juror, or by another toward a person who is either a member of a venire or a juror or a member of his or her family, of which the member has knowledge. (H) This rule does not prohibit a member from communicating with persons who are members of a venire or jurors as a part of the official proceedings. (I) For purposes of this rule, "juror" means any empaneled, discharged, or excused juror.	
MR 3.5(d) engage in conduct intended to disrupt a tribunal."	No corresponding California rule or discussion	
MR 3.5 COMMENTS 1. MR 3.5, cmt. 1 notes that "[m]any forms of improper influence upon a tribunal are proscribed by criminal law," and MR 3.5 requires a lawyer to avoid violations. 2. Cmt. 2 simply recites the prohibition on ex parte contact with persons having an official capacity in the proceeding. 3. Cmt. 3 states a lawyer may contact a juror after the jury has been discharged, unless prohibited by law or court order. 4. Cmt. 4 states, inter alia, that "[r]efraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants," and that lawyer's should not reciprocate a judge's abuse,	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion 4. No corresponding California discussion	

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instead preserving the record for subsequent review. 5. Cmt. 5 notes the duty to refrain from disruptive conduct applies to depositions as well.	5. No corresponding California discussion	
MR 3.6: TRIAL PUBLICITY "(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."	**CAL. RULE 5-120. TRIAL PUBLICITY** "(A) A member who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the member knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.	
MR 3.6(b) Notwithstanding paragraph (a), a lawyer may state: (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved; (2) information contained in a public record; (3) that an investigation of a matter is in progress; (4) the scheduling or result of any step in litigation; (5) a request for assistance in obtaining evidence and information necessary thereto; (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and	**CAL. RULE 5-120(B)** Notwithstanding paragraph (A), a member may state: (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved; (2) the information contained in a public record; (3) that an investigation of the matter is in progress; (4) the scheduling or result of any step in litigation; (5) a request for assistance in obtaining evidence and information necessary thereto; (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual	

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(7) in a criminal case, in addition to subparagraphs (1) through (6): (i) the identity, residence, occupation and family status of the accused; (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person; (iii) the fact, time and place of arrest; and (iv) the identity of investigating and arresting officers or agencies and the length of the investigation."	or the public interest; and (7) in a criminal case, in addition to subparagraphs (1) through (6): (a) the identity, residence, occupation, and family status of the accused; (b) if the accused has not been apprehended, information necessary to aid in apprehension of that person; (c) the fact, time, and place of arrest; and (d) the identity of investigating and arresting officers or agencies and the length of the investigation.	
MR 3.6(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity."	**CAL. RULE 5-120(C)** Notwithstanding paragraph (A), a member may make a statement that a reasonable member would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the member or the member's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity."	
MR 3.6(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a)."	No corresponding California rule or discussion, but **CAL. RULE 5-120**, Discussion states: "Paragraph (A) is intended to apply to statements made by *or on behalf of* the member." (emphasis added)	

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MR 3.6 COMMENTS 1. MR 3.6, cmt. 1, states: "Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved," and discusses several considerations in striking a balance between the right to a fair trial and the right of free expression. 2. Cmt. 2 recognizes special confidentiality rules for some proceedings (e.g., juvenile), and notes MR 3.4(c) requires compliance with such rules. 3. Cmt. 3 notes "the rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates." 4. Cmt. 4 elaborates on paragraph (b), which identifies statements that ordinarily would not cause a "substantial likelihood of material prejudice," and notes it "is not intended to be an exhaustive listing of the subjects …." 5. Cmt. 5 lists six "subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration." These relate to: (1) "character, credibility, reputation or criminal record of a party …" (2) in a criminal case, "the possibility of a plea of guilty," etc.; (3) "the performance or results of any examination or test," etc.; (4) "any opinion as to the guilt or	1. No corresponding California discussion 2. No corresponding California discussion, but see **CAL. RULE 5-120, DISCUSSION ¶.2**, which list factors for determining a violation of 5-120, including: "(3) whether the extrajudicial statement violates a … special rule of confidentiality (for example, in juvenile … proceedings)" 3. No corresponding California discussion, but **CAL. RULE 5-120, DISCUSSION ¶.1** provides: "5-120 is intended to apply equally to prosecutors and criminal defense counsel." 4. See **CAL. RULE 5-120, DISCUSSION ¶.2**, which provides: "Whether an extrajudicial statement violates rule 5-120 depends on many factors, including: (1) whether the extrajudicial statement presents information clearly inadmissible as evidence in the matter for the purpose of proving or disproving a material fact in issue; (2) whether the extrajudicial statement presents information the member knows is false, deceptive, or the use of which would violate Business and Professions Code section 6068(d); (3) whether the extrajudicial statement violates a lawful "gag" order, or protective order, statute, rule of court, or special rule of confidentiality (for example, in juvenile, domestic, mental disability, and certain	

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innocence of a defendant or suspect in a criminal case …"; (5) "information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial"; and (6) "the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty." 6. Cmt. 6 notes that criminal jury trials are most sensitive to extrajudicial speech, civil trials less so, and non-jury hearings and arbitrations may even be less affected. 7. Cmt. 7 elaborates on 3.6(c), noting that otherwise questionable statements under the rule "may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client."	criminal proceedings); and (4) the timing of the statement." 5. No corresponding California discussion, but see **CAL. RULE 5-120, DISCUSSION ¶.2**, discussed in 4, above. 6. No corresponding California discussion 7. No corresponding California discussion	

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MR 3.7: LAWYER AS WITNESS "(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client."	**CAL. RULE 5-210. MEMBER AS WITNESS** A member shall not act as an advocate before a jury which will hear testimony from the member unless: (A) The testimony relates to an uncontested matter; or (B) The testimony relates to the nature and value of legal services rendered in the case; or (C) The member has the informed, written consent of the client. If the member represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the member is employed and shall be consistent with principles of recusal.	1. MR 3.7 applies to both bench and jury trials; rule 5-210 applies only to jury trials. 2. Unlike MR 3.7, rule 5-210(C) allows a lawyer to testify with the informed written consent of the client. 3. Note: Rule 5-210(C) appears to address only one of the concerns inherent in the prohibition on a lawyer as a witness, i.e., that it may create a conflict of interest with the client. Accordingly, the client's consent will obviate the problem. 4. However, MR 3.7, cmt. 2, notes that the opposing party also has a valid objection: "The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof."
MR 3.7(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9."	**CAL. RULE 5-210 DISCUSSION:** No corresponding California rule or discussion, but the Discussion to rule 5-210 states: "Rule 5-210 is not intended to apply to circumstances in which a lawyer in an advocate's firm will be a witness."	

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MR 3.7 COMMENTS		
1. MR 3.7, cmt. 1 notes that combining roles of advocate and witness can prejudice the tribunal and opponent, and cause a conflict of interest with the client.	1. No corresponding California discussion	
2. Cmt. 2 notes that because a lawyer is an advocate (argument) and a witness testifies as to fact, "[i]t may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof."	2. No corresponding California discussion	
3. Cmt. 3 elaborates on MR 3.7(a)(1)-(2), which provide exceptions to the advocate-witness rule.	3. No corresponding California discussion	
4. Cmt. 4 notes that MR 3.7(a)(3) "recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses."	4. No corresponding California discussion	
5. Cmt. 5 elaborates on MR 3.7(b), explaining that "the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify …."	5. **CAL. RULE 5-120, DISCUSSION ¶.2** states "Rule 5-210 is not intended to apply to circumstances in which a lawyer in an advocate's firm will be a witness."	
6. Cmt. 6 addresses conflicts of interest and notes that "[d]etermining whether or not such a conflict exists is primarily the responsibility of the lawyer involved," and it there is conflict, the client's informed consent must be obtained.	6. No corresponding California discussion	

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7. Cmt. 7 notes that if the lawyer witness may not testify because of a conflict, then under 3.4(b), another lawyer in the firm cannot be an advocate without the client's informed consent.	7. No corresponding California discussion	
MR 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR "The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;"	**CAL. RULE 5-110. PERFORMING THE DUTY OF MEMBER IN GOVERNMENT SERVICE** "A member in government service shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause. If, after the institution of criminal charges, the member in government service having responsibility for prosecuting the charges becomes aware that those charges are not supported by probable cause, the member shall promptly so advise the court in which the criminal matter is pending."	1. Unlike MR 3.8, rule 5-100 creates a continuing duty to advise the court if the lawyer later determines that the charges filed are not supported by probable cause.
MR 3.8(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;"	No corresponding California rule or discussion	
MR 3.8(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;"	No corresponding California rule or discussion	
MR 3.8(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose	No corresponding California rule or discussion, but this is constitutional Brady obligation	

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to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;"		
MR 3.8(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes: (1) the information sought is not protected from disclosure by any applicable privilege; (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and (3) there is no other feasible alternative to obtain the information.;"	No corresponding California rule or discussion	
MR 3.8(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule."	1. **CAL. RULE 5-120. TRIAL PUBLICITY** (A) A member who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the member knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter. 2. No corresponding California rule or discussion as to the requirement to exercise reasonable care to prevent investigators, etc. from making an	1. The more general provision of rule 5-120(A) applies to both prosecutors and defense counsel; MR 3.8(f) applies only to prosecutors.

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	extrajudicial statement	
MR 3.8 COMMENTS 1. MR 3.8, cmt. 1, notes in part: "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence," and adds that "knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4."	1. No corresponding California discussion	
2. Cmt. 2 notes that "waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons," but that MR 3.8(c) does not apply "to an accused appearing pro se with the approval of the tribunal."	2. No corresponding California discussion	
3. Cmt. 3 notes MR 3.8(d) allows a prosecutor to seek a protective order "if disclosure of information to the defense could result in substantial harm to an individual or to the public interest."	3. No corresponding California discussion	
4. Cmt. 4 states in full: "Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship."	4. No corresponding California discussion	
5. Cmt. 5 notes that MR 3.8(f) supplements MR 3.6 and notes that "[i]n the context of a criminal prosecution, a prosecutor's	5. No corresponding California discussion	

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extrajudicial statement can create the additional problem of increasing public condemnation of the accused." Accordingly, "a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused." 6. Cmt. 6 notes that MR 5.1 and 5.3 (responsibilities re lawyers and non-lawyers in the office) also apply to prosecutors. Cmt. 6 also notes that MR 3.8(f) "requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor."	6. No corresponding California discussion	

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MR 3.9: ADVOCATE IN NONADJUDICATIVE PROCEEDINGS "A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5."	No corresponding California rule or discussion	
MR 3.9 COMMENTS 1. MR 3.9, cmt. 1 states, inter alia, that "[a] lawyer appearing before [a legislative, etc.] body must deal with it honestly and in conformity with applicable rules of procedure." 2. Cmt. 2 notes that while non-lawyers may advocate to non-adjudicative bodies, those bodies "have a right to expect lawyers to deal with them as they deal with courts." 3. Cmt. 3 notes the rule "does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements," nor "to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners."	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion	

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MR 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS "In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or	No corresponding California rule or discussion, but see: **CAL. B&P CODE § 6068(d)** re using "such means only as are consistent with the truth …." **CAL. B&P CODE § 6128(a)**, which provides a lawyer is guilty of a misdemeanor if he is "guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court *or any party*." (emphasis added)	
MR 4.1(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6."	See above re MR 4.1(a)	
MR 4.1 COMMENTS 1. MR 4.1, cmt. 1, notes: "A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts," and discusses kinds of misrepresentations. Cmt. 1 also states "general dishonest conduct" by a lawyer is subject to MR 8.4. 2. Cmt. 2 specifies that MR 4.1 "refers to statements of fact," and whether a statement concerns fact "can depend on the circumstances." Cmt. 2 also discusses representations in negotiation. 3. Cmt. 3 addresses situations "where a client's crime or fraud takes the form of a	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion	

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lie or misrepresentation," and how a lawyer should proceed under MR 1.2(d) [prohibiting counseling or assisting client in crime or fraud]. Depending on the circumstances, the lawyer's response can include withdrawal, disaffirming an opinion, and "in extreme cases, substantive law may require a lawyer to disclose certain information relating to the representation to avoid being deemed to have assisted the client's crime or fraud."		
MR 4.2: COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."	**CAL. RULE 2-100. COMMUNICATION WITH A REPRESENTED PARTY** (A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer. (B) For purposes of this rule, a "party" includes: (1) An officer, director, or managing agent of a corporation or association, and a partner or managing agent of a partnership; or (2) An association member or an employee of an association, corporation, or partnership, if the subject of the communication is any act or omission of such person in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability or whose statement	1. MR 4.2 applies to any represented "person;" rule 2-100 applies to a represented "party" 2. MR 4.2, cmt. 4 provides the rule does not "preclude communication with a represented person who is seeking advice from a *lawyer who is not otherwise representing a client in the matter*." (Emphasis added). Thus, under MR 4.2, a lawyer can give a second opinion as contemplated by 2-100(C)(2). 3. Note: Changing the first phrase to "In representing a client in a matter," might obviate the confusion about who is governed by the rule. 4. When an organization is the other party, MR 4.2, cmt. 7 states the rule applies to communications with "a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or

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	may constitute an admission on the part of the organization. (C) This rule shall not prohibit: (1) Communications with a public officer, board, committee, or body; (2) Communications initiated by a party seeking advice or representation from an independent lawyer of the party's choice; or (3) Communications otherwise authorized by law.	omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability," but not "a former constituent." See rule 2-100, Discussion. 5. MR 4.2, cmt. 8, states the rule's prohibitions apply only when the lawyer has "actual knowledge." California case law is in accord. Truitt v. Superior Court (1997) 59 Cal.App.4th 1183, 1190, 69 Cal.Rptr.2d 558, 563.
MR 4.2 COMMENTS 1. MR 4.2, cmt. 1, notes MR 4.2 aids the legal system by, inter alia, "protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers *who are participating in the matter* …." (Emphasis added) 2. Cmt. 2 notes that MR 4.2 protects "any person" in the matter, not just a party. 3. Cmt. 3 notes MR 4.2 applies even where the represented person initiates the communication and states a lawyer "must immediately terminate" contact. 4. Cmt. 4 states MR 4.2 does not prohibit communication with a represented person "concerning matters outside the representation," and gives examples (e.g., communication with a government agency; person consulting a lawyer not representing another person in the matter [second opinion], etc.). Cmt. 4 also notes that "[p]arties to a matter may communicate directly with each other,	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion 4. **CAL. RULE 2-100, DISCUSSION ¶.2** provides in part: "Rule 2-100 is not intended to prevent the parties themselves from communicating with respect to the subject matter of the representation, and nothing in the rule prevents a member from advising the client that such communication can be made. Moreover, the rule does not prohibit a member who is also a party to a legal matter from directly or indirectly	

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and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make," and "a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so." 5. Cmt. 5 discusses communications authorized by law, which "include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government." Cmt. 5 also notes: "When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused," and that simply because a communication is not a constitutional violation does not make it permissible under MR 4.2. 6. Cmt. 6 notes that a lawyer uncertain that a communication with a represented person is allowed may seek a court order, and "may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited …." 7. Cmt. 7 notes that MR 4.2 "prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter	communicating on his or her own behalf with a represented party …." 5. **CAL. RULE 2-100, DISCUSSION ¶.1** provides: "Rule 2-100 is intended to control communications between a member and persons the member knows to be represented by counsel unless a statutory scheme or case law will override the rule. There are a number of express statutory schemes which authorize communications between a member and person who would otherwise be subject to this rule. These statutes protect a variety of other rights such as the right of employees to organize and to engage in collective bargaining, employee health and safety, or equal employment opportunity. Other applicable law also includes the authority of government prosecutors and investigators to conduct criminal investigations, as limited by the relevant decisional law." 6. No corresponding California discussion 7. No corresponding California discussion, but see **CAL. RULE 2-100(B)** [re which constituents of an organization are subject to the rule] and **CAL. RULE 2-100, DISCUSSION ¶.5** re rule not applying to former constituent.	

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may be imputed to the organization for purposes of civil or criminal liability," but that consent of the organization's lawyer is not required for former constituents. Cmt. 7 adds that consent by the personal lawyer of a constituent is sufficient for MR 4.2. 8. Cmt. 8 notes that MR 4.2's prohibitions apply only where the lawyer actually knows the person is represented, though it includes actual knowledge as "may be inferred from the circumstances." 9. Cmt. 9 notes that if the person is not represented, MR 4.3 governs.	8. No corresponding California discussion, but see Truitt v. Superior Court (1997) 59 Cal.App.4th 1183, 1190, 69 Cal.Rptr.2d 558, 563. 9. No corresponding California discussion	
MR 4.3: DEALING WITH UNREPRESENTED PERSON "In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client."	No corresponding California rule or discussion.	1. See, however, **CAL. B&P CODE § 6068(d)** and **CAL. RULE § 6128(b)**, as discussed above in relation to MR 4.1(a). 2. In the organizational context, see also rule 3-600(D) concerning the lawyer's obligations to the client organization's constituents. 3. There is, however, no California rule remotely related to the second sentence of MR 4.3. To the contrary, see Flatt v. Superior Court (1994) 9 Cal.4th 275, 885 P.2d 950, 36 Cal.Rptr.2d 537.
MR 4.3 COMMENTS		

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1. MR 4.3, cmt. 1, notes that unrepresented persons, particularly those "not experienced in dealing with legal matters," can become confused about the lawyer's role and states: "to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person." 2. Cmt. 2 notes that the rule chiefly targets unrepresented persons with interests adverse to the lawyer's client. In those situations, the lawyer may not give any advice except to obtain counsel. Cmt. 2 also notes that MR 4.3 does not prohibit a lawyer from negotiating with an unrepresented person: "So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations."	1. No corresponding California discussion 2. No corresponding California discussion	

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MR 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS "(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person."	No corresponding California rule or discussion, but see B&P Code § 6068(f), which provides it is the duty of a lawyer "to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged."	
MR 4.4(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender."	No corresponding California rule or discussion.	1. MR 4.4(b) is an attempt to clarify ABA Formal Ethics Opn. 92-368, which was oft-criticized, see Reporter's Explanation of Changes to MR 4.4, but which was adopted by the Court of Appeal in State Compensation Insurance Fund v. WPS, Inc. (1999) 70 Cal.App.4th 644, 82 Cal.Rptr.2d 799.
MR 4.4 COMMENTS 1. MR 4.4, cmt. 1, notes that lawyer may not "disregard the rights of third persons," including "legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship." 2. Cmt. 2 elaborates on MR 4.4(b), which addresses mistakenly-sent documents. It notes that the lawyer must notify the sender, but any other steps the lawyer must take "is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived." Cmt. 2 also notes that MR 4.4(b) does not address the situation where a lawyer "receives a	1. No corresponding California discussion 2. No corresponding California discussion, but see reference to State Compensation Insurance Fund v. WPS, Inc. (1999) 70 Cal.App.4th 644, 82 Cal.Rptr.2d 799 in Notes & Comments, above.	

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document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person." Finally, "document" includes e-mail, etc. 3. Cmt. 3 notes that where not required to return an inadvertently-sent document, the decision to do so "is a matter of professional judgment ordinarily reserved to the lawyer."	3. No corresponding California discussion, but see note 2, above.	
MR 5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS "(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct."	**CAL. RULE 3-110. FAILING TO ACT COMPETENTLY** * * * DISCUSSION "The duties set forth in rule 3-110 include the duty to supervise the work of *subordinate attorney* and non-attorney employees or agents. (citations omitted)." (Emphasis added).	1. MR 5.1(a) *expressly* requires partners and other lawyers with managerial authority to make "reasonable efforts" to have in place "measures giving "reasonable assurance" the firm's lawyers conform to the rules, and MR 5.1(b) expressly requires any lawyer with direct supervisory authority over a lawyer to make similar efforts to ensure that lawyer's conduct conforms to the rules. Rule 3-110 does not expressly require either, but:
MR 5.1(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct."	**CAL. RULE 3-110, DISCUSSION**	1. The language of 3-110, Discussion, appears to impose the duty to supervise the work of subordinate lawyers and non-attorney employees on *all* lawyers in the firm who may supervise another lawyer, even if they are not partners or do not have managerial authority.
MR 5.1(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:	**CAL. RULE 3-110, DISCUSSION** No corresponding California rule or discussion, but see **Cal. Rule 3-110,**	

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(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."	**Discussion**.	
MR 5.1 COMMENTS 1. MR 5.1, cmt. 1 notes that lawyers with managerial authority per 5.1(a) include "members of a partnership and, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law," and discusses legal services organizations as well. MR 5.1(b) applies to supervising lawyers. 2. Cmt. 2 notes that 5.1(a) requires managerial partners to establish measures to ensure firm's lawyers adhere to the rules (e.g., re conflicts, litigation calendars, client funds, etc.) 3. Cmt. 3 states that there may be other measures necessary to comply with 5.1(a) that "depend on the firm's structure and the nature of its practice." Cmt. 3 then compares small and large firms, and notes "the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion	

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Rules." 4. Cmt. 4 simply notes 5.1(c) "expresses a general principle of personal responsibility for acts of another." 5. Cmt. 5 elaborates on (c)(2), and states: "Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter." It also discusses an example of appropriate remedial action when a subordinate lawyer is involved in misconduct. 6. Cmt. 6 states: "Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation." 7. Cmt. 7 states: "Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules." 8. Cmt. 8 states the duties imposed on managerial and supervisory lawyers "do not alter the personal duty of each lawyer in a firm to abide by the Rules."	4. No corresponding California discussion 5. No corresponding California discussion 6. No corresponding California discussion 7. No corresponding California discussion 8. No corresponding California discussion	

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MR 5.2: RESPONSIBILITIES OF A SUBORDINATE LAWYER "(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person."	**CAL. RULE 1-120.** No corresponding California rule or discussion, but see: 1. **CAL. RULE 1-120. ASSISTING, SOLICITING, OR INDUCING VIOLATIONS** "A member shall not knowingly assist in, solicit, or induce any violation of these rules or the State Bar Act." 2. **CAL. RULE 3-110, DISCUSSION (above)**	
MR 5.2(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty."	No corresponding California rule or discussion	
MR 5.2 COMMENTS 1. MR 5.2, cmt. 1 states that although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor," that fact is relevant to the subordinate lawyer's knowledge necessary for a rule violation. 2. Cmt. 2 states: "When lawyers in a supervisor subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment," and discusses appropriate action in a range of situations, and concludes: "if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question	1. No corresponding California discussion 2. No corresponding California discussion	

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should protect the subordinate professionally if the resolution is subsequently challenged."		
MR 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS "With respect to a nonlawyer employed or retained by or associated with a lawyer: (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;	**CAL. RULE 3-110. DISCUSSION** * * * DISCUSSION "The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and *non-attorney employees* or agents. (citations omitted)" (emphasis added).	
MR 5.3(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and	No corresponding California rule or discussion	
MR 5.3(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a	No corresponding California rule or discussion	

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time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."		
MR 5.3 COMMENTS 1. MR 5.3, cmt. 1 states in part: "A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product." 2. Cmt. 2 elaborates on paragraphs (a) through (c).	1. No corresponding California discussion 2. No corresponding California discussion	
MR 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER "(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that: (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons; (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; (3) a lawyer or law firm may include nonlawyer employees in a compensation	**CAL. RULE 1-320. FINANCIAL ARRANGEMENTS WITH NON-LAWYERS** "(A) Neither a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer, except that: (1) An agreement between a member and a law firm, partner, or associate may provide for the payment of money after the member's death to the member's estate or to one or more specified persons over a reasonable period of time; or (2) A member or law firm undertaking to complete unfinished legal business of a deceased member may pay to the estate of the deceased member or other person legally entitled thereto that proportion of the total compensation which fairly	1. Rule 1-320 is nearly identical to MR 5.4, although it does not include a provision analogous to MR 5.4(a)(4), which appears to be a codification of ABA Formal Ethics Opn. 93-374 (Sharing Of Court-Awarded Fees With Sponsoring Pro Bono Organizations). 2. Nor does MR 5.4(a) contain a provision similar to rule 1-320(A)(4). 3. Rule 1-320, Discussion, provides: "Rule 1-320(C) is not intended to preclude compensation to the communications media in exchange for advertising the member's or law firm's availability for professional employment."

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or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.	represents the services rendered by the deceased member; (3) A member or law firm may include non-member employees in a compensation, profit-sharing, or retirement plan even though the plan is based in whole or in part on a profit-sharing arrangement, if such plan does not circumvent these rules or Business and Professions Code section 6000 et seq.; or (4) A member may pay a prescribed registration, referral, or participation fee to a lawyer referral service established, sponsored, and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California."	
MR 5.4(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.	**CAL. RULE 1-310. FORMING A PARTNERSHIP WITH A NON-LAWYER** "A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law."	1. **RULE 1-310, DISCUSSION**, provides: "Rule 1-310 is not intended to govern members' activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person who is not a lawyer."
MR 5.4(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.	**CAL. RULE 3-310(F). AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS** * * * "(F) A member shall not accept compensation for representing a client from one other than the client unless: (1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and (2) Information relating to representation	1. **RULE 3-310, DISCUSSION ¶.11**, provides: "Paragraph (F) is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (See San Diego Navy Federal Credit Union v. Cumis Insurance Society (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].)"

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	of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) The member obtains the client's informed written consent, provided that no disclosure or consent is required if: (a) such nondisclosure is otherwise authorized by law; or (b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public."	
MR 5.4(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if: (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation ; or (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer."	No corresponding California rule or discussion	

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MR 5.4 COMMENTS 1. MR 5.4, cmt. 1, notes the limitations in MR 5.4 "are to protect the lawyer's professional independence of judgment," and when a third party pays the fees, "that arrangement does not modify the lawyer's obligation to the client." 2. Cmt. 2 notes MR 5.4 expresses limitations on a third party's ability "to direct or regulate the lawyer's professional judgment," and cross-references MR 1.8(f) [Third-party payor]	1. No corresponding California discussion 2. No corresponding California discussion, but see **CAL. RULE 3-310, DISCUSSION ¶.11**, in NOTES & COMMENTS, above.	

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MR 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE **MR 5.5(a)**. "(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so."	**CAL. RULE 1-300(B). UNAUTHORIZED PRACTICE OF LAW** * * * "(B) A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." **CAL. RULE 1-300(A)** A member shall not aid any person or entity in the unauthorized practice of law."	1. *See also* **CAL. RULE 1-311** ("Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member") 2. Model Rule 5.5, as extensively revised by the ABA's MJP Commission, was adopted by the House of Delegates at the ABA August 2002 Annual Meeting.
MR 5.5(b) "A lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction."	1. No corresponding California Rule of Professional Conduct. Instead, California has addressed MJP issues through Rules of Court 964-967. *See* Notes & Comments. 2. A prohibition similar to that in **MR 5.5(b)(1)** is found in paragraph (c)(2) of **CAL. RULE OF COURT 966(c)(2)** and **CAL. RULE OF COURT 967(c)(2)**. Rule 966 governs lawyers who practice temporarily in California as part of litigation. Rule 967, governs non-litigating lawyers who are temporarily in California to provide legal services. 3. A prohibition similar to that in **MR 5.5(b)(2)** is found in **CAL. RULE OF COURT 966(c)(1)** and **CAL. RULE OF COURT 967(c)(1)**. **MR 5.5(b)(2)** is also consistent with **CAL. B&P CODE §6126(a)**.	1. California Supreme Court Multi-jurisdictional Practice Implementation Committee suggested **CAL. RULES OF COURT 964-967** to permit four categories of lawyers who are licensed to practice in a U.S. jurisdiction other than California and who are active members in good standing of their respective bars to practice law in California in limited circumstances. See: (www.courtinfo.ca.gov/invitationstocomment/documents/sp03-04.pdf) The Cal. Supreme Court adopted those rules, effective 11/15/2004. 2. MR 5.5(a)(1) is also s consistent with the "virtual practice of law" prohibition established by the California Supreme Court in *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Ct.* (1998) 17 Cal.4th 119, 128-129, 70 Cal.Rptr.2d 304.
MR 5.5(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a	1. No corresponding California Rule of Professional Conduct. Instead, California has addressed MJP issues through Rules of Court 964-967.	1. MR 5.5(c)(1) appears to be inconsistent with *Birbrower*, *supra*, 17 Cal.4th at 126 fn.3.

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temporary basis in this jurisdiction that: (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.	2. **MR 5.5(c)(1)**. Although there is no provision in Rules of Court 964-967 identical to MR 5.5(c)(1), **CAL. RULE OF COURT 964** permits a lawyer not licensed in California to practice law under the supervision of a California-licensed attorney employed by a "qualifying legal service provider." **CAL. RULE OF COURT 964(j)(1)(A)**. However, unlike MR 5.5(c)(1), which applies to any lawyer, only registered legal services lawyers come within the provisions of rule 964. 3. **MR 5.5(c)(2)**. **CAL. RULE OF COURT 983** governs pro hac vice admission. **CAL. RULE OF COURT 966(b)(2)-(4)** also authorizes performance of legal services before admission pro hac vice. Rule 966 governs lawyers who practice temporarily in California as part of litigation. 4. **MR 5.5(c)(3)**. Cal. statutes & rules of court that permit out-of-state lawyers to participate in arbitrations, include: **CAL. CODE CIV. PROC. § 1297.351** (international arbitrations); **(g)**, **CAL. CODE CIV. PROC. §1282.4 (i)** (statutory collective bargaining arbitrations); **CAL. CODE CIV. PROC. § 1282.4(f)** (legal services in connection with arbitration in jurisdiction in which the lawyer admitted); and **CAL. CODE CIV. PROC. §1282.4** and **CAL. RULE OF COURT 983.4** (*pro hac vice* admission to appear in other arbitrations). **CAL. RULE OF COURT 966** would also permit the same kinds of activities permitted under MR 5.5(c)(3).	2. Concerning MR 5.5(c)(2) & (3), **CAL. RULE OF COURT 966(g)(1)** defines "formal legal proceeding" as "litigation, arbitration, mediation, or a legal action before an administrative decision-maker."

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	5. **MR 5.5(c)(4)**. *See* **CAL. RULE OF COURT 967**, which governs non-litigating lawyers who are temporarily in California to provide legal services.	
MR 5.5(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that: (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission; or (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.	1. No corresponding California Rule of Professional Conduct. 2. **MR 5.5(d)(1)**. **CAL. RULE OF COURT 965** permits in-house counsel residing in California but licensed in another state to provide legal services to their employer-client (except for making court appearances or other services requiring *pro hac vice* admission). 3. **MR 5.5(d)(2)**. *See* **CAL. RULE OF COURT 967(b)(2)**. That rule provides that an attorney meeting the rule's requirements, may provide "legal assistance or legal advice in California on an issue of federal law or of the law of a jurisdiction other than California *to attorneys licensed to practice law in California*." (Emphasis added).	1. *See also* **CAL. B&P CODE § 6125**. 2. Although MR 5.5(d)(2) appears to permit a lawyer not licensed in the jurisdiction to provide legal services authorized by federal law to anyone, Cal. Rule of Court 967(b)(2) limits the provision of such services to California-licensed lawyers.
MR 5.5 COMMENTS 1. The ABA has adopted 21 comments to its completely overhauled Model Rule 5.5, which are not reproduced here. The comments explain the new revisions. 2. Former MR 5.5, cmt. 1, has been broken up into comments [2] and [3], with some additional language. Comment [2]	1. No corresponding California comments.	

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continues to note that the definitions of "the practice of law" varies in different jurisdictions, and that rule 5.5does not prevent a lawyer from employing paraprofessionals and delegating tasks, so long as the lawyer supervises and retains responsibility. 3. Unlike old Comment [1], which stated a lawyer "is not prohibited," Comment [3] is written more positively and now states that a lawyer *may advise* and instruct nonlawyers such as accountants and social workers, as well as counsel nonlawyers who wish to proceed pro se. Comment [3] also adds the following sentence: "Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services."		
MR 5.6: RESTRICTIONS ON RIGHT TO PRACTICE "A lawyer shall not participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or	**CAL. RULE 1-500. AGREEMENTS RESTRICTING A MEMBER'S PRACTICE** "(A) A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of a member to practice law, except that this rule shall not prohibit such an agreement which: (1) Is a part of an employment, shareholders', or partnership agreement among members provided the restrictive agreement does not survive the	1. Both rules exempt from the rule a partnership agreement, so long as the restriction does not survive the termination of the partnership; and an agreement concerning benefits upon retirement. 2. Rule 1-500 also exempts agreements entered into as part of discipline under B&P Code §§ 6092.5 & 6093. 3. Both provide that an agreement settling a lawsuit between clients cannot restrict the lawyer from representing other clients in similar litigation. *See* rule 1-500, Discussion ¶.1; MR 5.6, cmt.2.

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	termination of the employment, shareholder, or partnership relationship; or (2) Requires payments to a member upon the member's retirement from the practice of law; or (3) Is authorized by Business & Professions Code sections 6092.5, subdivision (i) or 6093. (B) A member shall not be a party to or participate in offering or making an agreement which precludes the reporting of a violation of these rules."	4. MR 5.6, cmt. 3 notes that the rule is not intended to prohibit restrictions in contracts concerning the sale of a law practice under MR 1.17. Rule 1-500 has no such rule provision or Discussion paragraph. 5. MR 5.6 does not have a provision corresponding to 1-500(B).
MR 5.6(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy."	**CAL. RULE 1-500(A)**, above.	

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MR 5.6 COMMENTS 1. MR 5.6, cmt. 1 notes MR 5.6(a) prohibits agreements restricting a lawyer's right to practice after leaving a firm "except for restrictions incident to provisions concerning retirement benefits for service with the firm." 2. Cmt. 2 simply explains 5.6(b) by paraphrase. 3. Cmt. 3 notes that the rule does not apply to restrictions incident to MR 1.17 [sale of law practice]	1. **CAL. RULE 1-500, DISCUSSION ¶.2**, provides: "Paragraph (A) permits a restrictive covenant in a law corporation, partnership, or employment agreement. The law corporation shareholder, partner, or associate may agree not to have a separate practice during the existence of the relationship; however, upon termination of the relationship (whether voluntary or involuntary), the member is free to practice law without any contractual restriction except in the case of retirement from the active practice of law." 2. **CAL. RULE 1-500, DISCUSSION ¶.1**, provides: "Paragraph (A) makes it clear that the practice, in connection with settlement agreements, of proposing that a member refrain from representing other clients in similar litigation, is prohibited. Neither counsel may demand or suggest such provisions nor may opposing counsel accede or agree to such provisions." 3. No corresponding California discussion	

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MR 5.7: RESPONSIBILITIES REGARDING LAW RELATED SERVICES (a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law related services, as defined in paragraph (b), if the law related services are provided: (1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or (2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law related services knows that the services are not legal services and that the protections of the client lawyer relationship do not exist.	**CAL. B&P CODE §§ 6175-6177.** No corresponding California rule or discussion, but see Article 10.5 of the State Bar Act, **CAL. B&P CODE §§ 6175-6177** ("Provision of Financial Services By Lawyers").	
MR 5.7(b) The term 'law related services' denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer."	No corresponding California rule	
MR 5.7 COMMENTS 1. MR 5.7, cmt. 1 notes the underlying concern of MR 5.7: "the possibility that the person for whom the law related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client lawyer relationship," & refers to confidentiality,	1. No corresponding California discussion	

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conflicts and independent judgment.		
2. Cmt. 2 notes that MR 5.7 "applies to the provision of law related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law related services are performed and whether the law-related services are performed through a law firm or a separate entity."	2. No corresponding California discussion	
3. Cmt. 3 explains MR 5.7(a)(1) and (2), which explain when a lawyer is subject to the Rules when law related services are not distinct from the lawyer's legal services, or are distinct from the lawyer's legal services, respectively.	3. No corresponding California discussion	
4. Cmt. 4 explains that a lawyer can deliver non-related services through an entity "distinct from that through which the lawyer provides legal services," and notes that where the lawyer controls that entity, he must "take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services" with attendant protections.	4. No corresponding California discussion	
5. Cmt. 5 provides if a lawyer refers a client to a separate law-related entity the lawyer controls, he must comply with MR 1.8(a) [similar to Cal.Rule 3-300]	5. No corresponding California discussion	
6. Cmt. 6 notes that when a lawyer takes reasonable measures per MR 5.7(a)(2) to warn the client about the limited protections from the provision of law-related services, he "should communicate to the person receiving the law related services, in a manner sufficient to assure	6. No corresponding California discussion	

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that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client lawyer relationship," preferably in writing before any agreement is signed.		
7. Cmt. 7 notes the burden is on the lawyer to ensure the user of law related services understands the limits of the protections afforded.	7. No corresponding California discussion	
8. Cmt. 8 provides in part: "Regardless of the sophistication of potential recipients of law related services, a lawyer should take special care to keep separate the provision of law related and legal services in order to minimize the risk that the recipient will assume that the law related services are legal services," and notes that in some circumstances – when legal and law-related services are so intertwined they are indistinguishable – the requirements of 5.7(a)(2) "cannot be met."	8. No corresponding California discussion	
9. Cmt. 9 describes types of law-related services (e.g., title insurance, financial planning, etc.)	9. No corresponding California discussion	
10. Cmt. 10 notes that if the circumstances require the lawyer to accord recipients of law-related services protections of the Rules, he "must take special care to heed the proscriptions" of the conflicts rules, confidentiality rule and rules re advertising & solicitation (MR 7.1 to 7.3).	10. No corresponding California discussion	
11. Cmt. 11 states: "When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law	11. No corresponding California discussion	

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related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services," and notes the degree of protection may be less than under the Rules.		
MR 6.1: VOLUNTARY PRO BONO PUBLICO SERVICE "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should: (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to: (1) persons of limited means or (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and	No corresponding California rule or discussion	1. Note, however, that in 1989, the Bar's Board of Governors adopted a resolution encouraging lawyers to provide 50 hours/year of pro bono legal services. At its June 2002 meeting, the Board adopted a revised resolution regarding pro bono, again suggesting at least 50 hours/year, but this time liking pro bono service to **CAL. B&P CODE § 6068(h)** ("It is the duty of an attorney … (h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.") Neither MR 6.1 nor the Board's resolution provides for mandatory pro bono service. 2. MR 6.1, cmt. 11 provides: "Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule."
MR 6.1(b) provide any additional services through: (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure	No corresponding California rule or discussion	

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or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; (2) delivery of legal services at a substantially reduced fee to persons of limited means; or (3) participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means."		
MR 6.1 COMMENTS 1. MR 6.1, cmt. 1 states: "[e]very lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay," and notes states can specify more or less than 50 hours, which is an annual average over the career of the lawyer. 2. Cmt. 2 notes in part that MR 6.1(a)(1) and (2) "recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of	1. No corresponding California discussion 2. No corresponding California discussion	

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fee."		
3. Cmt. 3 explains eligibility for legal services provided under MR 6.1, e.g., "those who qualify for participation in programs funded by the Legal Services Corporation."	3. No corresponding California discussion	
4. Cmt. 4 notes: "services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section."	4. No corresponding California discussion	
5. Cmt. 5 notes that where a lawyer cannot fulfill the annual hours with (a)(1) and (2) activities, he can meet the remainder of the commitment through services outlined in (b). The same is true of government lawyers who may be prohibited from providing (a)(1) and (2) services.	5. No corresponding California discussion	
6. Cmt. 6 explains the services contemplated by (b)(1).	6. No corresponding California discussion	
7. Cmt. 7 explains the services contemplated by (b)(2).	7. No corresponding California discussion	
8. Cmt. 8 explains the services contemplated by (b)(2).	8. No corresponding California discussion	
9. Cmt. 9 notes that because pro bono services are a "professional responsibility" and thus requires an individual commitment, at times a lawyer may discharge the responsibility "by providing financial support to organizations providing free legal services to persons of limited means." Cmt. 9 also notes that a firm may be able to satisfy the pro bono responsibilities of its members in the	9. No corresponding California discussion	

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aggregate. 10. Cmt. 10 notes that lawyers should *also* financially support programs the government and the profession have instituted to meet the legal needs of persons of limited means. 11. Cmt. 11 states: "Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule." 12. Cmt. 12 states: "The responsibility set forth in this Rule is not intended to be enforced through disciplinary process."	10. No corresponding California discussion 11. No corresponding California discussion 12. No corresponding California discussion	
MR 6.2: ACCEPTING APPOINTMENTS "A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as: (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;	**CAL. B&P CODE §6068(h). DUTIES OF ATTORNEY** "It is the duty of an attorney to: * * * (h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed."	
MR 6.2(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or	**CAL. RULE 3-700(C)(1)(f)** No corresponding California Rule, but see Cal. Rule 3-700(C)(1)(f), which allows a member to withdraw from representation if the client "breaches an agreement or obligation to the member as to expenses or fees."	
MR 6.2(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client lawyer relationship or the lawyer's ability to represent the client."		

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MR 6.2 COMMENTS 1. MR 6.2, cmt. 1, notes that although a lawyer is not obliged to accept client the lawyer finds repugnant, the freedom to select clients is qualified, i.e., lawyer can be appointed by a court. 2. Cmt. 2 states a lawyer can seek to decline an appointment for "good cause," which includes "if the lawyer could not handle the matter competently … or if undertaking the representation would result in an improper conflict of interest." 3. Cmt. 3 notes: "An appointed lawyer has the same obligations to the client as retained counsel …."	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion	
MR 6.3: MEMBERSHIP IN LEGAL SERVICES ORGANIZATION "A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization: (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or	No corresponding rule in California (see NOTES & COMMENTS)	1. **CAL. RULE 1-600** (Legal Services Programs) appears to be directed at a different issue from MR 6.3. 2. MR 6.3 is concerned with a lawyer being an officer or director of a legal services <u>organization</u>, e.g., the ACLU, and the conflicts which may arise when the organization represents persons with interests adverse to the lawyer's clients. 3. Rule 1-600, on the other hand, appears to be primarily concerned with a lawyer accepting referrals from lawyer referral services that are operated by non-lawyers. See rule 1-600(B), which provides: "The Board of Governors of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral *Services*, which, as from time to time amended, shall be binding on members."

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		(Emphasis added) 4. Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services became effective on 1/1/1997. They can be found at Appendix B of Publication 250. 5. *See also* **CAL. B&P CODE § 6155** (Lawyer Referral Service), which excludes from the definition of a lawyer referral service "A program having as its purpose the referral of clients to attorneys for representation on a pro bono basis." B&P Code § 6155(c)(3).
MR 6.3(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer."	No corresponding rule in California	
MR 6.3 COMMENTS 1. MR 6.3, cmt. 1, states "[a] lawyer who is an officer or a member of [a legal services] organization does not thereby have a client lawyer relationship with persons served by the organization," and so a conflict between persons served and the lawyer's client will not necessarily disqualify the lawyer. 2. Cmt. 2 notes it may be necessary in some cases to reassure clients of the LSO that conflicting loyalties of board members will not affect their representation.	1. No corresponding California discussion 2. No corresponding California discussion	

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MR 6.4: LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS "A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client."	No corresponding California rule or discussion.	
MR 6.4 COMMENTS 1. MR 6.4, cmt. 1, notes in part that "[l]awyers involved in organizations seeking law reform generally do not have a client lawyer relationship with the organization," but notes the lawyer is obligated to make "an appropriate disclosure when the lawyer knows a private client might be materially benefited" by the organization's work.	1. No corresponding California discussion	

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MR 6.5: NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS "(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter: (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.	No corresponding California rule or discussion	1. MR 6.5 is a new rule. It is directed at unbundling," i.e., the provision of limited scope legal services, the subject of the October 2001 Report of the Limited Representation Committee of the California Commission on Access to Justice. 2. This issue is a specific charge of the Rules Revision Commission.
MR 6.5(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule."		
MR 6.5 COMMENTS 1. MR 6.5, cmt. 1 notes that in limited services programs, "such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation," and notes that conflicts screening often is not possible. 2. Cmt. 2 notes the lawyer must obtained the client's informed consent to the limited	1. No corresponding California discussion 2. No corresponding California discussion	

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representation and, except as provided in MR 6.5, rules 1.6 and 1.9(c) [both dealing with confidentiality] apply.		
3. Cmt. 3 notes that because a conflicts check ordinarily is not possible, lawyer need comply with conflicts rules only if lawyer knows the representation creates a conflict either personally or for a lawyer in lawyer's firm.	3. No corresponding California discussion	
4. Cmt. 4 notes that a lawyer's limited representation in such a program will not preclude the lawyer's firm from representing a client with interests adverse to the limited-representation client, nor will the lawyer's personal disqualification be imputed to other lawyers in the program.	4. No corresponding California discussion	
5. Cmt. 5 notes that if lawyer continues to represent a limited-representation client in an ongoing bases, MR 1.7, 1.9(a) and 1.10 become applicable.	5. No corresponding California discussion	

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MR 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES "A lawyer shall not make a **false or misleading** communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a **material** misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not **materially** misleading."	**CAL. RULE 1-400. ADVERTISING AND SOLICITATION** * * * "(A) For purposes of this rule, "communication" means **any message** or offer made by or on behalf of a member concerning the availability for professional employment of a member or a law firm directed to any former, present, or prospective client, including but not limited to the following: (1) Any use of firm name, trade name, fictitious name, or other professional designation of such member or law firm; or (2) Any stationery, letterhead, business card, sign, brochure, or other comparable written material describing such member, law firm, or lawyers; or (3) Any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof; or (4) Any unsolicited correspondence from a member or law firm directed to any person or entity. * * * (D) A communication or a solicitation (as defined herein) shall not: (1) Contain **any untrue** statement; or (2) Contain any matter, or present or arrange any matter in a manner or format which is **false, deceptive**, or which tends to **confuse, deceive, or mislead** the public; or (3) Omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made,	1. See also B&P Code §§ 6157.2 ("Advertisements—Guarantees, Settlements, Impersonations, Dramatizations and Contingent Fee Basis") and 6157.2 ("Advertisements—Disclosure of Payor Other Than Member"). 2. Unlike MR 7.1, neither rule 1-400 nor B&P Code § 6157.1 contains a materiality requirement. 3. Rule 1-400(E) also provides that the Board of Governors will adopt standards concerning the burden of proof in disciplinary proceedings. ("(E) The Board of Governors of the State Bar shall formulate and adopt standards as to communications which will be presumed to violate this rule 1- 400. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.") 4. Note that Ethics 2000 recommended, and the House of Delegates agreed, that paragraphs (b) and (c) of previous MR 7.1 should be deleted and removed to the Comment. The Reporter's Explanation of Changes for MR 7.1 states: "The categorical prohibitions in current paragraphs (b) and (c) have been

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	not **misleading** to the public; or (4) Fail to indicate clearly, expressly, or by context, that it is a communication or solicitation, as the case may be; or (5) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct. (6) State that a member is a "certified specialist" unless the member holds a current certificate as a specialist issued by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors, and states the complete name of the entity which granted certification." (Emphasis added) **CAL. B&P CODE §6157.1 ADVERTISEMENTS -- FALSE, MISLEADING OR DECEPTIVE** "No advertisement shall contain any false, misleading, or deceptive statement or omit to state any fact necessary to make the statements made, in light of circumstances under which they are made, not false, misleading, or deceptive."	criticized as being overly broad and have therefore been relocated from text to the commentary as examples of statements that are likely to be misleading." In addition, that part of paragraph (b) that provided "states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law" has been relocated to MR 8.4(e) "because this prohibition should not be limited to advertising."
MR 7.1 COMMENTS 1. MR 7.1, cmt. 1 notes that the rule "governs all communications about a lawyer's services, including advertising permitted by Rule 7.2," and that statements must be "truthful." 2. Cmt. 2 notes that "[t]ruthful statements that are misleading are also prohibited."	1. No corresponding California discussion 2. No corresponding California discussion, but see **CAL. RULE 1-400(D)(2)&(3)**.	

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A statements is misleading if it "omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading," or "there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation." 3. Cmt. 3 notes how a truthful report of a lawyer's achievements or an unsubstantiated comparison of the lawyer's services or fees can be misleading, and notes appropriate disclaimers may preclude a finding that the communication was misleading. 4. Cmt. 4 cross-references MR 8.4(e) ["implying an ability to influence improperly a government agency or official"].	3. No corresponding California discussion 4. No corresponding California discussion	
MR 7.2: ADVERTISING "(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.	No corresponding California rule or discussion that states in the affirmative that lawyer may advertise his or her services.	1. In California, all of the rules relating to advertising and solicitation are written in the negative, i.e., proscribe what is not allowed, with the implied understanding that advertising in general is allowed. California's approach is different from that of both the Model Rules and the ABA's Model Code of Professional Responsibility ("ABA Code"). a. The Model Rules prohibit materially false or misleading communications; communications which are not false or misleading are presumed not to violated the rules.

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		b. The ABA Code, on the other hand, contains a laundry list of communications that are allowed. See DR 2-101(B)(1)-(25). Items not on the list are presumed prohibited under the rule. c. California, like the Model Rules, prohibits any communications that is false and misleading, rule 1-400 & B&P Code § 6157.1, and provides examples of communications that are either prohibited, rule 1-400(D)(6) & B&P Code 6157.2, or create a presumption that the communication violates the rule. Standards to rule 1-400; B&P Code 2. The use of the term "electronic" is new with the 2002 version of the Model Rules. Since 1994, California has expressly regulated electronic advertising. *See* **CAL. B&P CODE § 6157 & CAL. B&P CODE6158.**
	CAL. RULE 1-400(F). ADVERTISING AND SOLICITATION * * * (F) A member shall retain for two years a true and correct copy or recording of any communication made by written or electronic media. Upon written request, the member shall make any such copy or recording available to the State Bar, and, if requested, shall provide to the State Bar evidence to support any factual or objective claim contained in the communication.	1. Note that Ethics 2000 recommended, and the House of Delegates agreed, that the "copy" requirement be dropped from the rule. The Reporter's Explanation of Changes for MR 7.2 states: "The requirement that a lawyer retain copies of all advertisements for two years has become increasingly burdensome, and such records are seldom used for disciplinary purposes. Thus the Commission, with the concurrence of the ABA Commission on Responsibility in Client Development, is recommending elimination of the requirement that

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		records of advertising be retained for two years." 2. Note also that B&P Code § 659.1 requires a one-year retention period.
MR 7.2(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may (1) pay the reasonable costs of advertisements or communications permitted by this Rule; (2) pay the usual charges of a plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and (3) pay for a law practice in accordance with Rule 1.17. (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if (i) the reciprocal referral agreement is not exclusive, and (ii) the client is informed of the existence and nature of the agreement.	**CAL. B&P CODE § 6157.3, 6157.4** No corresponding California rule or discussion, but see: **CAL. B&P CODE §6157.3 ADVERTISEMENTS -- DISCLOSURE OF PAYOR OTHER THAN MEMBER** "Any advertisement made on behalf of a member, which is not paid for by the member, shall disclose any business relationship, past or present, between the member and the person paying for the advertisement." **CAL. B&P CODE §6157.4 LAWYER REFERRAL SERVICE ADVERTISEMENTS -- NECESSARY DISCLOSURES** "Any advertisement that is created or disseminated by a lawyer referral service shall disclose whether the attorneys on the organization's referral list, panel, or system, paid any consideration, other than a proportional share of actual cost, to be included on that list, panel, or system." *See also* **CAL. RULE 1-320** (Financial Arrangements With Non-Lawyers), paragraph (C), which provides: "A member shall not compensate, give, or promise anything of value to any representative of the press, radio, television, or other communication medium in anticipation of or in return for	1. **CAL. RULE 1-310(A)(4)** also provides: "(A) Neither a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer, except that: * * * (4) A member may pay a prescribed registration, referral, or participation fee to a lawyer referral service established, sponsored, and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California." 2. Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services became effective on 1/1/1997. They can be found at Appendix B of Publication 250. 3. **MR 7.2(b)(4)** was adopted by the House of Delegates at the ABA's August 2002 Annual Meeting. The House of Delegates also adopted a new comment [8] to Model Rule 7.2. *See below*.

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	publicity of the member, the law firm, or any other member as such in a news item, but the incidental provision of food or beverage shall not of itself violate this rule," and the Discussion, which explains: "Rule 1-320(C) is not intended to preclude compensation to the communications media in exchange for advertising the member's or law firm's availability for professional employment."	
MR 7.2(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content."	**CAL. RULE 1-400, STANDARD (12)** Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989 as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400: * * * (12) A "communication," except professional announcements, in the form of an advertisement primarily directed to seeking professional employment primarily for pecuniary gain transmitted to the general public or any substantial portion thereof by mail or equivalent means or by means of television, radio, newspaper, magazine or other form of commercial mass media which does not state the name of the member responsible for the communication. When the communication is made on behalf of a law firm, the communication shall state the name of at least one member responsible for it.	
MR 7.2 COMMENTS 1. MR 7.2, cmt. 1 discusses why advertising		

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is allowed ("public's need to know about legal services") but also notes "advertising by lawyers entails the risk of practices that are misleading or overreaching."	1. No corresponding California discussion	
2. Cmt. 2 notes the kind of information MR 7.2 allows (e.g., "information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined," etc.)	2. No corresponding California discussion	
3. Cmt. 3 cautions against a bar imposing overbroad restrictions on the type (e.g., electronic), content, and style (e.g., "undignified") as it "assumes that the bar can accurately forecast the kind of information that the public would regard as relevant," and notes that e-mail advertising is permissible.	3. No corresponding California discussion	
4. Cmt. 4 notes that neither MR 7.2 or 7.3 prohibits communications authorized by law (e.g., class action notices).	4. No corresponding California discussion	
5. Cmt. 5 elaborates on MR 7.2(b)(1) [paying for advertising, etc.] It states: "A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel," etc.	5. No corresponding California discussion	
6. Cmt. 6 elaborates on MR 7.2(b)(2) [paying charges for legal service plan, which it defines as "a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation."] Cmt. 6	6. No corresponding California discussion, but see **CAL. RULE 1-310(A)(4), AND CAL. B&P CODE §§ 6157.3 & 6157.4**, set out above in relation to MR 7.2(b).	

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notes MR 7.2 only permits payments to non-profit or "qualified" plans, which it defines as "one that is approved by an appropriate regulatory authority as affording adequate protections for prospective clients," and refers to the ABA's "Model Supreme Court Rules Governing Lawyer Referral Services, etc." 7. Cmt. 7 notes that a lawyer participating in such a plan must assure the plan is compatible with the lawyer's professional obligations, e.g., only truthful and not misleading advertising, and no in-person solicitation by the plan.	7. No corresponding California discussion	
8. New **MR 7.2, COMMENT [8]**, provides: "[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are	1. No corresponding Discussion section in California. See **CAL. RULE 1-320** ("Financial Arrangements With Non-lawyers")	1. The House of Delegates adopted a new comment [8] to Model Rule 7.2at the ABA's August 2002 Annual Meeting. **MR 7.2(b)(4)** was adopted by the House at the same meeting. *See below*.

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governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.		
MR 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS "(a) A lawyer shall not by in person or, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted: (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer.	**CAL. RULE 1-400(B). ADVERTISING AND SOLICITATION** * * * (B) For purposes of this rule, a "solicitation" means any communication: (1) Concerning the availability for professional employment of a member or a law firm in which a significant motive is pecuniary gain; and (2) Which is; (a) delivered in person or by telephone, or (b) directed by any means to a person known to the sender to be represented by counsel in a matter which is a subject of the communication. (C) A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California. A solicitation to a former or present client in the	1. *See also* **CAL. B&P CODE §§ 6150-6154**, concerning prohibitions on the use of runners and cappers to solicit clients. 2. Note that rule 1-400(B)(2)(b), which defines a solicitation as "any communication . . . *directed by any means* to a person known to the sender to be represented by counsel in a matter which is a subject of the communication," (emphasis added), has no counterpart in MR 7.3, which prohibits only in-person or live phone or real-time electronic contact. 3. California has no rule or standard that includes a reference to "real-time electronic contact," which is addressed at electronic communications other than the telephone (e.g., chat rooms, instant messages) that do not allow the target of the solicitation/communication time to reflect. The Reporter's Explanation of Changes to MR 7.3 states: "Differentiating between e-mail and real-time electronic

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	discharge of a member's or law firm's professional duties is not prohibited.	communication, the Commission has concluded that the interactivity and immediacy of response in real-time electronic communication presents the same dangers as those involved in live telephone contact."
MR 7.3(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if: (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or (2) the solicitation involves coercion, duress or harassment.	**CAL. RULE 1-400(D). ADVERTISING AND SOLICITATION** * * * "(D) A communication or a solicitation (as defined herein) shall not: (5) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct." **CAL. RULE 1-400, STANDARDS (3) & (4)** Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989 as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400: * * * (3) A "communication" which is delivered to a potential client whom the member knows or should reasonably know is in such a physical, emotional, or mental state that he or she would not be expected to exercise reasonable judgment as to the retention of counsel. (4) A "communication" which is transmitted at the scene of an accident or at or en route to a hospital, emergency care center, or other health care facility.	

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MR 7.3(c) Every written or, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).	**CAL. RULE 1-400(D). ADVERTISING AND SOLICITATION** * * * "(D) A communication or a solicitation (as defined herein) shall not: (4) Fail to indicate clearly, expressly, or by context, that it is a communication or solicitation, as the case may be." **CAL. RULE 1-400, STANDARD (5)** Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989 as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400: * * * (5) A "communication," except professional announcements, seeking professional employment for pecuniary gain, which is transmitted by mail or equivalent means which does not bear the word "Advertisement," "Newsletter" or words of similar import in 12 point print on the first page. If such communication, including firm brochures, newsletters, recent legal development advisories, and similar materials, is transmitted in an envelope, the envelope shall bear the word "Advertisement," "Newsletter" or words of similar import on the outside thereof.	

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MR 7.3(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan."	No corresponding California rule or discussion, but see **Cal. Rule 13.3** of the **RULES AND REGULATIONS PERTAINING TO LAWYER REFERRAL SERVICES** (Appendix B to Publication 250), which provides: "13.3 No referral shall be made which violates any provision of the State Bar Act or Rules of Professional Conduct, including, but not limited to, restrictions against unlawful solicitation and false and misleading advertising."	
MR 7.3 COMMENTS 1. MR 7.3, cmt. 1 explains that "direct in person or, live telephone or real-time electronic contact" is potentially abusive because the prospective client "may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self interest in the face of the lawyer's presence and insistence upon being retained immediately." 2. Cmt. 2 explains the potential for abuse justifies the prohibition of real-time solicitation, particularly since other alternatives as described in MR 7.2 are available. 3. Cmt. 3 observes that communications permitted under MR 7.2 are also preferable because they can be recorded and review, thus providing an extra layer of assurance that the statements made are truthful and not misleading. 4. Cmt. 4 notes there are exceptions to the rule's application because it is less likely	1. No corresponding California discussion, but see **CAL. RULE 1-400, STANDARDS (3), (4)** 2. No corresponding California discussion 3. No corresponding California discussion	

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that a lawyer will engage in abusive practices with a former client or one with a personal or family relationship to the lawyer. The same applies where the lawyer is not seeking pecuniary gain or the prospective client contacted the lawyer.	4. No corresponding California discussion	
5. Cmt. 5 notes that even in situations identified in cmt. 4, false or misleading statements (MR 7.1) are prohibited, as well as "coercion, duress or harassment" per 7.3(b)(2) and continued "contact with a prospective client who has made known to the lawyer a desire not to be solicited" per 7.3(b)(1).	5. No corresponding California discussion	
6. Cmt. 6 notes: "This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer," and explains why it does not.	6. No corresponding California discussion	
7. Cmt. 7 notes that the requirement that certain materials be marked "Advertising Material" does not apply to responses to requests of potential clients or general announcements (promotions, new affiliations in firm, etc.)	7. No corresponding California discussion, but **CAL. RULE 1-400, STANDARD (5)**, excepts "professional announcements" from the presumptive violations its describes.	
8. Cmt. 8 elaborates on MR 7.3(d) and states it "permits a lawyer to participate with an organization which uses personal	8. No corresponding California discussion	

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contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan," and discusses restrictions on such an organization (e.g., it may not be owned or directed by lawyer participants in the plan, etc.)		
MR 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION "(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.	No corresponding California rule or discussion that states in the affirmative that lawyer may communicate his or her specialization.	1. See Comment 1 for MR 7.2(a). That a California lawyer is permitted to do so can be implied from **CAL. RULE 1-400(D)(6)**, set out below. 2. *See also* **CAL. RULES OF COURT, RULE 983.5** ("Certifying Legal Specialists")
MR 7.4(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation 'Patent Attorney' or a substantially similar designation;.	No corresponding California rule or discussion	
MR 7.4(c) A lawyer engaged in Admiralty practice may use the designation 'Admiralty,' 'Proctor in Admiralty' or a substantially similar designation.	No corresponding California rule or discussion	
MR 7.4(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless: (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by	**CAL. RULE 1-400(D). ADVERTISING AND SOLICITATION** * * * (D) A communication or a solicitation (as defined herein) shall not: * * *	

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the American Bar Association; and (2) the name of the certifying organization is clearly identified in the communication."	(6) State that a member is a "certified specialist" unless the member holds a current certificate as a specialist issued by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors, and states the complete name of the entity which granted certification.	
MR 7.4 COMMENTS 1. MR 7.4, cmt. 1 simply elaborates on 7.4(a), which permits lawyers to indicate areas of practice, etc. 2. Cmt. 2 explains the patent and admiralty designations discussed in 7.4(b) & (c). 3. Cmt. 3 simply elaborates on 7.4(d), which discusses certification as a specialist. It adds: "In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification."	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion	

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MR 7.5: FIRM NAMES AND LETTERHEADS "(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.	**CAL. RULE 1-400, STANDARD (9)** Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989 as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400: * * * (9) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation used by a member or law firm in private practice which differs materially from any other such designation used by such member or law firm at the same time in the same community.	
MR 7.5(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.	No corresponding California rule or discussion	
MR 7.5(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.	**CAL. RULE 1-400, STANDARD (6)** Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989 as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400: * * * (6) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies a relationship between any member	

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	in private practice and a government agency or instrumentality or a public or non-profit legal services organization.	
MR 7.5(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact."	**CAL. RULE 1-400, STANDARD (7)** Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989 as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400: * * * (7) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies that a member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 unless such relationship in fact exists.	
MR 7.5 COMMENTS 1. MR 7.5, cmt. 1 notes that in addition to designating a firm by its members (living or deceased), a lawyer or firm can also be designated by trade name, website address, etc., but cautions that a disclaimer may be required if a geographical name (e.g., "Malibu Legal Clinic"). Cmt. 1 also states "it is misleading to use the name of a lawyer not associated with the firm …." Finally, at the ABA August 2002 Annual Meeting, the House of Delegates adopted a new phrase at the end of the last sentence of	1. No corresponding California discussion	

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comment 1. The last sentence now reads: "However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer." 2. Cmt. 2 elaborates on 7.5(d), noting that "lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, 'Smith and Jones,' for that title suggests that they are practicing law together in a firm."	2. No corresponding California discussion, but see Cal. Formal Ethics Opn. 1997-150.	
MR 7.6: POLITICAL CONTRIBUTIONS TO OBTAIN GOVERNMENT LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES "A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment."	No corresponding California rule or discussion	1. As of July 2002, no state had adopted MR 7.6.
MR 7.6 COMMENTS 1. MR 7.6, cmt. 1, notes the concern that "when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency, or to obtain appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit."	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion 4. No corresponding California discussion 5. No corresponding California discussion 6. No corresponding California discussion	

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2. Cmt. 2 defines "political contribution" as "any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office," but not contributions re a referendum. 3. Cmt. 3 defines ""government legal engagement" ("any engagement to provide legal services that a public official has the direct or indirect power to award") and "appointment by a judge" ("appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge"), both of which are subject to several listed exceptions (e.g., substantially uncompensated services). 4. Cmt. 4 defines "lawyer or law firm" to include "a political action committee or other entity owned or controlled by a lawyer or law firm." 5. Cmt. 5 explains what "political contributions for the purpose of obtaining or being considered for a government legal engagement" are, and discusses factors to consider in determining whether such a purpose exists. 6. Cmt. 6 states: "If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4(b) is implicated."		

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MR 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (a) knowingly make a false statement of material fact; or	**CAL. RULE 1-200. FALSE STATEMENT REGARDING ADMISSION TO THE STATE BAR** "(A) A member shall not knowingly make a false statement regarding a material fact or knowingly fail to disclose a material fact in connection with an application for admission to the State Bar. B) A member shall not further an application for admission to the State Bar of a person whom the member knows to be unqualified in respect to character, education, or other relevant attributes. (C) This rule shall not prevent a member from serving as counsel of record for an applicant for admission to practice in proceedings related to such admission."	1. The Discussion to rule 1-200 provides: "For purposes of rule 1-200 'admission' includes readmission." 2. Unlike MR 8.1, rule 1-200 makes no mention of "disciplinary matter," but **CAL. &P CODE § 6068(i)** provides in part that it is every attorney's duty: "To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney." Section 6068(i), however, also recognizes the attorney's constitutional privileges and states: "Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her."
MR 8.1(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.	No corresponding California rule or discussion.	
MR 8.1 COMMENTS 1. MR 8.1, cmt. 1 notes that the duties imposed by MR 8.1 also apply to applicants for admission to the bar, and applies to both the a lawyer's own	1. No corresponding California discussion. Rule 1-200's Discussion states: "For purposes of rule 1-200 "'admission' includes readmission," but does not state	

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admission or discipline and to that of others. Cmt. 1 also clarifies that 8.1(b) requires correction of any prior misstatement, as well as "affirmative clarification" of any misconception of the disciplinary or admissions authority of which the person becomes aware. 2. Cmt. 2 notes MR 8.1 is subject to the Fifth Amendment. 3. Cmt. 3 notes that a lawyer representing either an applicant for admission or lawyer subject to discipline is governed by the Rules.	that it applies to both applicants and attorneys, etc. 2. No corresponding California discussion 3. No corresponding California discussion. Rule 1-200(C) provides: "This rule shall not prevent a member from serving as counsel of record for an applicant for admission to practice in proceedings related to such admission."	
MR 8.2: JUDICIAL AND LEGAL OFFICIALS "(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.	**CAL. B&P CODE § 6068(b).** No corresponding California rule or discussion, but see: **§6068. DUTIES OF ATTORNEY** "It is the duty of an attorney to: * * * (b) To maintain the respect due to the courts of justice and judicial officers."	
MR 8.2(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct."	**CAL. RULE 1-700(A)** provides: "A member who is a candidate for judicial office in California shall comply with Canon 5 of the Code of Judicial Ethics." *See also* **CALIFORNIA CONSTITUTION, ART. VI, § 18(m)**, which provides: "The Supreme Court shall make rules for the conduct of judges both on and off the bench, and for judicial candidates in the conduct of their	1. The California Supreme Court adopted the California Code of Judicial Ethics on 1/15/96.

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	campaigns. These rules shall be referred to as the Code of Judicial Ethics."	
MR 8.2 COMMENTS 1. MR 8.2, cmt. 1 notes that because lawyer assessments of fitness of persons for judicial office are relied on, "honest and candid opinions on such matters contributes to improving the administration of justice." 2. Cmt. 2 provides a lawyer seeking judicial office "should be bound by applicable limitations on political activity." 3. Cmt. 3 notes "lawyers are encouraged … to defend judges and courts unjustly criticized."	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion	
MR 8.3: REPORTING PROFESSIONAL MISCONDUCT "(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.	No corresponding California rule or discussion	
MR 8.3(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.	No corresponding California rule or discussion	

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MR 8.3(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program."	No corresponding California rule or discussion	
MR 8.3 COMMENTS 1. MR 8.3, cmt. 1 notes that reporting is necessary in part because "[a]n apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover." 2. Cmt. 2 states "[a] report about misconduct is not required where it would involve violation of Rule 1.6," but the lawyer should encourage the client to consent to disclosure if it would not prejudice the client's interests. 3. Cmt. 3 notes MR 8.3 "limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent," and notes the term "substantial" in 8.3(a) and (b) "refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware." 4. Cmt. 4 notes the duty to report "does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question." 5. Cmt. 5 elaborates on 8.4(c), which provides an exception to the reporting requirement when the lawyer obtains the information re misconduct in a lawyer or judge assistance program. Cmt. 5 notes the exception "encourages lawyers and	1. No corresponding California discussion 2. No corresponding California discussion 3. No corresponding California discussion 4. No corresponding California discussion 5. No corresponding California discussion	

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judges to seek treatment through such a program."		
MR 8.4: MISCONDUCT "It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;	**CAL. RULE 1-120. ASSISTING, SOLICITING, OR INDUCING VIOLATIONS** "A member shall not knowingly assist in, solicit, or induce any violation of these rules or the State Bar Act." **CAL. B&P CODE §6103. SANCTIONS FOR VIOLATION OF OATH OR ATTORNEY'S DUTIES** "A wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."	
MR 8.4(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;	**CAL. B&P CODE §6106. MORAL TURPITUDE, DISHONESTY OR CORRUPTION IRRESPECTIVE OF CRIMINAL CONVICTION** The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension. *If the act constitutes a felony or misdemeanor*, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice	

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	therefor. (Emphasis added). **CAL. B&P CODE §6101. CONVICTION OF CRIMES INVOLVING MORAL TURPITUDE** (a) Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension. In any proceeding, whether under this article or otherwise, to disbar or suspend an attorney on account of that conviction, the record of conviction shall be conclusive evidence of guilt of the crime of which he or she has been convicted.	
MR 8.4(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;	**CAL. B&P CODE §6106. MORAL TURPITUDE, DISHONESTY OR CORRUPTION IRRESPECTIVE OF CRIMINAL CONVICTION** The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.	
MR 8.4(d) engage in conduct that is prejudicial to the administration of justice;	Given the explanation of paragraph (d) in MR 8.4, cmt. 3, there does not appear to be a corresponding California rule. However, see also: **CAL. RULE 5-200** and **CAL. B&P CODE § 6068(d)**, both discussed in relation to MR 3.3 and 3.4, above.	1. MR 8.4, cmt. 3, explains paragraph (d): "A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice." 2. Note that the recently-repealed first phrase of **CAL. B&P CODE § 6068(f)** ("To abstain from all offensive personality")

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		approximated MR 8.4(d).
MR 8.4(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or	No corresponding California rule or discussion; the closest is **CAL. RULE 5-200** and **CAL. B&P CODE § 6068(d)**, but they go more to to the underlying acts or goals that MR 8.4(e) prohibits the lawyer from suggesting he or she has an ability to accomplish.	1. The second clause of MR 8.4(e) was moved from the more specialized context of rule 7.2 (Advertising) to the more generally applicable rule, MR 8.4.
MR 8.4(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law."	No corresponding California rule or discussion	
MR 8.4 COMMENTS 1. MR 8.4, cmt. 1 elaborates on 8.4(a), but notes that (a) "does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take." 2. Cmt. 2 notes moral turpitude includes offenses such as adultery "that have no specific connection to fitness for the practice of law," and that "a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice" (e.g., offenses involving violence, dishonesty, breach of trust, etc.) 3. Cmt. 3 elaborates on 8.4(d), noting that [a] lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status violates (d) when such actions are prejudicial to the	1. No corresponding California discussion 2. No corresponding California discussion, but see In re Mostman (1989), which, while stating "the concept of moral turpitude defies exact description," defined "moral turpitude" as an "act of baseness, vileness or depravity in the private and social duties a man owes his fellow man contrary to the accepted and customary rule of right and duty between man and man." 47 Cal.3d 725, 736-37, 765 P.2d 448, 254 Cal.Rptr. 286, 292, quoting In re Craig (1938) 12 Cal.2d 93, 97, 82 P.2d 442. 3. No corresponding California discussion. See NOTES & COMMENTS 1 & 2 to MR 8.4(d), above.	

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administration of justice," but notes "[a] trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule." 4. Cmt. 4 notes in part: "A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists." 5. Cmt. 5 states that "lawyers holding public office assume legal responsibilities going beyond those of other citizens," and notes the same holds for "positions of private trust" (e.g., trustee, executor).	4. No corresponding California discussion 5. No corresponding California discussion	
MR 8.5: DISCIPLINARY AUTHORITY; CHOICE OF LAW (a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.	**CAL. RULE 1-100(D). RULES OF PROFESSIONAL CONDUCT, IN GENERAL** * * * (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	1. An amended Model Rule 8.5, revised by the ABA's MJP Commission, was adopted by the ABA House of Delegates and at the August 2002 ABA Annual Meeting. 2. There is no exact counterpart to MR 8.5(a). Rule 1-100(D) comes closest. 3. Just as in MR 8.5(a), a California bar member can be disciplined in California for conduct that occurred outside California, unless the rules of the other jurisdiction required the lawyer to act in a manner that conflicted with the CRPC's.

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	authorize the performance of such functions by such persons in this state except as otherwise permitted by law.	
MR 8.5(b) "Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows: (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and (2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur."	**CAL. RULE 1-100(D)**, discussed in relation to MR 8.5(a), above.	1. Cal. Rule 1-100(D)(1) provides that the California rules govern member conduct in or out of California, but it also contains a major exception, i.e., if the other jurisdiction in which the member is practicing requires all lawyers to follow a rule in conflict with the California rule, then the other rule controls. 2. MR 8.5(b) draws a distinction between whether the conduct is "in connection with a ~~court proceeding~~ matter pending before a tribunal," MR 8.5(b)(1), or is "any other conduct," MR 8.5(b)(2), in determining which choice of law rule apply. Rule 1-100(D) draws no such distinction.
MR 8.5 COMMENTS 1. MR 8.5, cmt. 1 notes paragraph (a) restates longstanding law, and discusses reciprocal discipline, enforcement, and jurisdictional issues. 2. Cmts. 2-7 address choice of law. Cmt. 2 notes that a lawyer can be subject to conflicting rules when licensed in different jurisdictions and that "the lawyer's conduct may involve significant contacts	1. No corresponding California discussion 2. No corresponding California discussion	1. The MJP Commission substantially revised the comments to Model Rule 8.5 and these were adopted by the House at the August 2002 ABA Annual Meeting.

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with more than one jurisdiction." 3. Cmt. 3 notes that 8.5(b)'s premise is that resolving conflicts is in the interest of both clients and the profession and so lawyer should be subject to only one set of rules, and be given a way to determine which rules apply. Paragraph (b) is also described as taking the approach of "(iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty." 4. Cmt. 4 is an elaboration of 8.4(b)(1), with examples. 5. New cmt. 5 provides: "When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule." 6. Cmt. 6 (old cmt. 5) notes that if two jurisdictions proceed against a lawyer for the same conduct, they should not proceed "on the basis of two inconsistent rules." 7. Cmt. 7 (old cmt. 6) takes a completely opposite position than in the former version of MR 8.5. In the old version, the comment noted that 8.5(b) "is not intended to apply to transnational practice." Cmt. 7 now provides: "The	3. No corresponding California discussion 4. No corresponding California discussion 5. No corresponding California discussion 6. No corresponding California discussion 7. No corresponding California discussion	

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choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise."		

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