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

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CALIFORNIA RULE OR STATUTE	2003 ABA MODEL RULE COUNTERPART	NOTES & COMMENTS
CAL. RULE 1-100(A). RULES OF PROFESSIONAL CONDUCT, IN GENERAL (A) Purpose and Function. The following rules are intended to regulate professional conduct of members of the State Bar through discipline. They have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with any standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar. For a willful breach of any of these rules, the Board of Governors has the power to discipline members as provided by law. The prohibition of certain conduct in these rules is not exclusive. Members are also bound by applicable law including the State Bar Act (Bus. & Prof.Code, § 6000 et seq.) and opinions of California courts. Although not binding, opinions of ethics committees in California should be consulted by members for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.	No corresponding Model Rule, but compare **Model Rules, Scope**. For example: [14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules. * * * [19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in	

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These rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty.	recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations. [20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.	

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CAL. RULE 1-100(B)(1). RULES OF PROFESSIONAL CONDUCT, IN GENERAL (1) "Law Firm" means: (a) two or more lawyers whose activities constitute the practice of law, and who share its profits, expenses, and liabilities; or (b) a law corporation which employs more than one lawyer; or (c) a division, department, office, or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or (d) a publicly funded entity which employs more than one lawyer to perform legal services.	**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 legal services organization or the legal department of a corporation or other organization.	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 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.
CAL. RULE 1-100(B)(2)-(4) (2) "Member" means a member of the State Bar of California. (3) "Lawyer" means a member of the State Bar of California or a person who is admitted in good standing of and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof.	No corresponding Model Rule.	

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(4) "Associate" means an employee or fellow employee who is employed as a lawyer.		
CAL. RULE 1-100(B)(5). (5) "Shareholder" means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.	**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(C). PURPOSE OF DISCUSSIONS Because it is a practical impossibility to convey in black letter form all of the nuances of these disciplinary rules, the comments contained in the Discussions of the rules, while they do not add independent basis for imposing discipline, are intended to provide guidance for interpreting the rules and practicing in compliance with them.	**MR Scope, ¶. [21]** [21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.	
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	**MR 8.5(a): 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	1. Note that on 8/12/2002, the ABA House of Delegates adopted the Report of the ABA's MJP Commission, which included extensive revisions to MR 8.5. 2. There is no exact counterpart to MR 8.5(a). Rule 1-100(D) comes closest.

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are not members: These rules shall also govern the activities of lawyers while engaged in the performance of lawyer functions in this state; but nothing contained in these rules shall be deemed to authorize the performance of such functions by such persons in this state except as otherwise permitted by law.	same conduct.	
CAL. RULE 1-100(D), discussed in relation to MR 8.5(a), above.	**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."	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 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.
CAL. RULE 1-100(E). (E) These rules may be cited and referred to as "Rules of Professional Conduct of the State Bar of California."	No corresponding Model Rule or Comment.	
CAL. RULE 1-100, DISCUSSION	**MR Scope, ¶¶. [19], [20]** [19] Failure to comply with an obligation or	

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The Rules of Professional Conduct are intended to establish the standards for members for purposes of discipline (See Ames v. State Bar (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) The fact that a member has engaged in conduct that may be contrary to these rules does not automatically give rise to a civil cause of action. (See Noble v. Sears Roebuck & Co. (1973) 33 Cal.App.3d 654 [109 Cal.Rptr. 269]; Wilhelm v. Pray, Price, Williams & Russell (1986) 186 Cal.App.3d 1324 [231 Cal.Rptr. 355].) These rules are not intended to supercede existing law relating to members in non-disciplinary contexts. (See, e.g., Klemm v. Superior Court (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (motion for disqualification of counsel due to a conflict of interest); Academy of California Optometrists, Inc. v. Superior Court (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); Chronometrics, Inc. v. Sysgen, Inc. (1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (disqualification of member appropriate remedy for improper communication with adverse party).	prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations. [20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral	

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	proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.	
CAL. RULE 1-110. DISCIPLINARY AUTHORITY OF THE STATE BAR A member shall comply with conditions attached to public or private reprovals or other discipline administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 956, California Rules of Court.	No corresponding Model Rule or Comment.	
CAL. RULE 1-120 ASSISTING, SOLICITING, OR INDUCING VIOLATIONS. 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**	**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."	

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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: 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 1-200. 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	**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	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

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for admission to practice in proceedings related to such admission."		regulatory or disciplinary proceeding against him or her."
CAL. RULE 1-200, DISCUSSION, provides: "'admission' includes readmission," but does not state that it applies to both applicants and attorneys, etc.	**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 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.	
CAL. RULE 1-300(A) A member shall not aid any person or entity in the unauthorized practice of law."	**MR 5.5(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."	1. In considering unauthorized practice of law in California, see **CAL. RULES OF COURT 964-967, 983, 983.1, 983.4 & 988** re Multijurisdictional Practice, at page 128, & following.

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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."	**MR 5.5(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."	1. *See also* **CAL. RULE 1-311** ("Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member")
See Notes & Comments.	**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 **CAL. RULES OF COURT 964-967**. *See* page 128, & following. 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)**. 4. **MR 5.5(b)(1)** is also 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.

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See Notes & Comments.	**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 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.	1. No corresponding California Rule of Professional Conduct. 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

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		permitted under MR 5.5(c)(3). 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. 6. 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."
See Notes & Comments.	**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). 4. *See also* **CAL. B&P CODE § 6125**. 5. 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.

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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."	**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.	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."
CAL. RULE 1-310, DISCUSSION. 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.	No corresponding Model Rule or Comment.	
CAL. RULE 1-311(A). EMPLOYMENT OF DISBARRED, SUSPENDED, RESIGNED, OR INVOLUNTARILY INACTIVE MEMBER (A) For purposes of this rule: (1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid; (2) "Involuntarily inactive member" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203(c), or California Rule of Court 958(d);	No corresponding Model Rule or Comment re any of the subsections of rule 1-311.	

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and (3) "Resigned member" means a member who has resigned from the State Bar while disciplinary charges are pending.		
CAL. RULE 1-311(B). (B) A member shall not employ, associate professionally with, or aid a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member to perform the following on behalf of the member's client: (1) Render legal consultation or advice to the client; (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer; (3) Appear as a representative of the client at a deposition or other discovery matter; (4) Negotiate or transact any matter for or on behalf of the client with third parties; (5) Receive, disburse or otherwise handle the client's funds; or (6) Engage in activities which constitute the practice of law.	No corresponding Model Rule or Comment	
CAL. RULE 1-311(C) (C) A member may employ, associate professionally with, or aid a disbarred, suspended, resigned, or involuntarily inactive member to perform research, drafting or clerical activities, including but not limited to:	No corresponding Model Rule or Comment	

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(1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents; (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or (3) Accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active member who will appear as the representative of the client.		
CAL. RULE 1-311(D). (D) Prior to or at the time of employing a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member, the member shall serve upon the State Bar written notice of the employment, including a full description of such person's current bar status. The written notice shall also list the activities prohibited in paragraph (B) and state that the disbarred, suspended, resigned, or involuntarily inactive member will not perform such activities. The member shall serve similar written notice upon each client on whose specific matter such person will work, prior to or at the time of employing such person to work on the client's specific matter. The member shall obtain proof of service of the client's written notice and shall retain such proof and a true and correct copy	No corresponding Model Rule or Comment	

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of the client's written notice for two years following termination of the member's employment with the client.		
CAL. RULE 1-311(E). (E) A member may, without client or State Bar notification, employ a disbarred, suspended, resigned or involuntarily inactive member whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.	No corresponding Model Rule or Comment	
CAL. RULE 1-311(F). (F) Upon termination of the disbarred, suspended, resigned, or involuntarily inactive member, the member shall promptly serve upon the State Bar written notice of the termination.	No corresponding Model Rule or Comment	
CAL. RULE 1-311, DISCUSSION. For discussion of the activities that constitute the practice of law, see Farnham v. State Bar (1976) 17 Cal.3d 605 [131 Cal.Rptr. 611]; Bluestein v. State Bar (1974) 13 Cal.3d 162 [118 Cal.Rptr. 175]; Baron v. City of Los Angeles (1970) 2 Cal.3d 535 [86 Cal.Rptr. 673]; Crawford v. State Bar (1960) 54 Cal.2d 659 [7 Cal.Rptr. 746]; People v. Merchants Protective Corporation (1922) 189 Cal. 531, 535 [209 P. 363]; People v. Landlords Professional Services (1989) 215 Cal.App.3d 1599 [264 Cal.Rptr. 548]; and People v. Sipper (1943) 61 Cal.App.2d Supp. 844 [142	No corresponding Model Rule or Comment	

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P.2d 960].) [FN1] Paragraph (D) is not intended to prevent or discourage a member from fully discussing with the client the activities that will be performed by the disbarred, suspended, resigned, or involuntarily inactive member on the client's matter. If a member's client is an organization, then the written notice required by paragraph (D) shall be served upon the highest authorized officer, employee, or constituent overseeing the particular engagement. (See rule 3-600.) Nothing in rule 1-311 shall be deemed to limit or preclude any activity engaged in pursuant to rules 983, 983.1, 983.2, and 988 of the California Rules of Court, or any local rule of a federal district court concerning admission pro hac vice.		
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	**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	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

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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 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."	representative of that lawyer the agreed-upon purchase price; (3) a lawyer or law firm may include nonlawyer employees in a compensation 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.	member's or law firm's availability for professional employment."
CAL. RULE 1-320(B). (B) A member shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's law firm by a 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 person or entity having made a recommendation resulting in the employment	**MR 7.2(b)(4)** A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may: * * * (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	1. **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. 2. New Comment [8]: "[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

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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 or given 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.	exclusive, and (ii) the client is informed of the existence and nature of the agreement.	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 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.
CAL. RULE 1-320(C). (C) 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 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.	No corresponding Model Rule or Comment	
CAL. RULE 1-320, DISCUSSION. Rule 1-320(C) is not intended to preclude		

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compensation to the communications media in exchange for advertising the member's or law firm's availability for professional employment.	No corresponding Model Rule or Comment	
CAL. RULE 1-400. ADVERTISING & SOLICITATION No corresponding California rule or discussion that states in the affirmative that lawyer may advertise his or her services.	**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.	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. 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

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		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(A). 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	**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."	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

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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, 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."		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 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."

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CAL. RULE 1-400(B) & (C). 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 discharge of a member's or law firm's professional duties is not prohibited.	**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.	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 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."
CAL. RULE 1-400(D)(1)-(3) (D) A communication or a solicitation (as	**Model Rule 7.1, cmt. 2** 1. Concerning **CAL. RULE 1-400(D)(1)**, **MR 7.1** provides "[a] lawyer shall not make a	

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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, not misleading to the public.	false or misleading communication about the lawyer or the lawyer's services." 2. Concerning **CAL. RULE 1-400(D)(2) & (3)**, **MR 7.1, CMT. 2** notes that "[t]ruthful statements that are misleading are also prohibited." 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." See also MR 7.1.	
CAL. RULE 1-400(D)(5). 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	**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.	

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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.		
CAL. RULE 1-400(D)(4). 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	**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).	

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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.		
CAL. RULE 1-400(D)(6). ADVERTISING AND SOLICITATION * * * (D) A communication or a solicitation (as defined herein) shall not: * * * (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(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 the American Bar Association; and (2) the name of the certifying organization is clearly identified in the communication." **MR 7.4(a): 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.	1. *See also* **CAL. RULES OF COURT, RULE 983.5** ("Certifying Legal Specialists")
CAL. RULE 1-400(D) 1. No corresponding California discussion 2. No corresponding California discussion, but see **CAL. RULE 1-400(D)(2)&(3)**,	**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." A statements is misleading if it "omits a	

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above. 3. No corresponding California discussion 4. No corresponding California discussion	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"].	
CAL. RULE 1-400(E) (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.	No corresponding Model Rule or Comment.	

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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.	No corresponding Model Rule or Comment. See "Notes & Comments"	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 records of advertising be retained for two years." 2. Note also that B&P Code § 659.1 requires a one-year retention period.
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 in private practice and a government agency or instrumentality or a public or non-profit legal services organization.	**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.	

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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(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 (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: 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.	

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NO CORRESPONDING CALIFORNIA RULE TO MODEL RULE 7.5(B)	**MR 7.5: Firm Names And Letterheads** (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.	1. California Supreme Court Multi-jurisdictional Practice Implementation Committee has 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. As proposed, rules would include a requirement that out-of-state lawyers engaged in a temporary practice in California are required to indicate in a web site or in another form of advertisement that is accessible in California that the lawyer is not a member of the State Bar of California. (www.courtinfo.ca.gov/invitationstocomment/documents/sp03-04.pdf)
CAL. RULE 1-400, STANDARDS 1. No corresponding California discussion, but see **CAL. RULE 1-400, STANDARDS (3), (4)** 2. No corresponding California discussion	**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	

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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,	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 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. 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). 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. 7. Cmt. 7 notes that the requirement that certain materials be marked "Advertising	

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but **CAL. RULE 1-400, STANDARD (5)**, excepts "professional announcements" from the presumptive violations its describes. 8. No corresponding California discussion	Material" does not apply to responses to requests of potential clients or general announcements (promotions, new affiliations in firm, etc.) 8. Cmt. 8 elaborates on MR 7.3(d) and states it "permits a lawyer to participate with an organization which uses personal 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.)	
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	**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."	

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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.		
CAL. RULE 1-400, OTHER STANDARDS The following are forms of "communication" defined in 1-400(A) that are presumed in violation of rule 1-400: 1. **CAL. RULE 1-400, STANDARD (1)**. "A 'communication' which contains guarantees, warranties, or predictions regarding the result of the representation." 2. **CAL. RULE 1-400, STANDARD 2)**. "A 'communication' which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as 'this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.'" 3. **CAL. RULE 1-400, STANDARD (8)**. "A 'communication' which states or implies that a member or law firm is 'of counsel' to another lawyer or a law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular."	No corresponding Model Rules or Discussions regarding the listed "Other Standards."	

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4. **CAL. RULE 1-400, STANDARD (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." 5. **CAL. RULE 1-400, STANDARD (10)**. "A 'communication' which implies that the member or law firm is participating in a lawyer referral service which has been certified by the State Bar of California or as having satisfied the Minimum Standards for Lawyer Referral Services in California, when that is not the case." 6. **CAL. RULE 1-400, STANDARD (11)**. Standard (11) was repealed effective 1/1/1997. 7. **CAL. RULE 1-400, STANDARD (13)**. A 'communication' which contains a dramatization unless such communication contains a disclaimer which states "this is a dramatization" or words of similar import." 8. **CAL. RULE 1-400, STANDARD (14)**. "A 'communication' which states or implies 'no fee without recovery' unless such communication also expressly discloses whether or not the client will be liable for costs." 9. **CAL. RULE 1-400, STANDARD (16)**. "A 'communication' which states or implies that a member is able to provide legal services in a language other than English		

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unless the member can actually provide legal services in such language or the communication also states in the language of the communication (a) the employment title of the person who speaks such language and (b) that the person is not a member of the State Bar of California, if that is the case." 10. **CAL. RULE 1-400, STANDARD (17)**. "An unsolicited 'communication' transmitted to the general public or any substantial portion thereof primarily directed to seeking professional employment primarily for pecuniary gain which sets forth a specific fee or range of fees for a particular service where, in fact, the member charges a greater fee than advertised in such communication within a period of 90 days following dissemination of such communication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. Where the communication is published in the classified or 'yellow pages' section of telephone, business or legal directories or in other media not published more frequently than once a year, the member shall conform to the advertised fee for a period of one year from initial publication, unless such communication expressly specifies a shorter period of time regarding the advertised fee."		

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CAL. RULE 1-500(A) 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 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."	**MR 5.6(a) 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	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. 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).
CAL. RULE 1-500(A), above.	**MR 5.6(b)** "A lawyer shall not participate in making or offering … (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy."	

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CAL. RULE 1-500, DISCUSSION 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	**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]	
CAL. RULE 1-600. LEGAL SERVICE PROGRAMS (A) A member shall not participate in a nongovernmental program, activity, or organization furnishing, recommending, or paying for legal services, which allows any	**MR 6.3 Membership in Legal Services Organizations** "A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer	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 organization, e.g., the ACLU, and the conflicts which may arise when the

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third person or organization to interfere with the member's independence of professional judgment, or with the client-lawyer relationship, or allows unlicensed persons to practice law, or allows any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules. (B) 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. DISCUSSION The participation of a member in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of these rules. Rule 1-600 is not intended to override any contractual agreement or relationship between insurers and insureds regarding the provision of legal services. Rule 1-600 is not intended to apply to the activities of a public agency responsible for providing legal services to a government or to the public. For purposes of paragraph (A), "a nongovernmental program, activity, or organization" includes, but is not limited to	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 (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." MR 6.3, Comments, omitted.	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." (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).

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group, prepaid, and voluntary legal service programs, activities, or organizations.		
CAL. RULE 1-700. MEMBER AS CANDIDATE FOR JUDICIAL OFFICE (A) A member who is a candidate for judicial office in California shall comply with Canon 5 of the Code of Judicial Ethics. (B) For purposes of this rule, "candidate for judicial office" means a member seeking judicial office by election. The determination of when a member is a candidate for judicial office is defined in the terminology section of the California Code of Judicial Ethics. A member's duty to comply with paragraph (A) shall end when the member announces withdrawal of the member's candidacy or when the results of the election are final, whichever occurs first. DISCUSSION Nothing in rule 1-700 shall be deemed to limit the applicability of any other rule or law.	**MR 8.2(b)** provides: "A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct."	
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,	**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	

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and is subject under the Code of Judicial Ethics to Canon 6D, shall comply with the terms of that canon.	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 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 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	**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."	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 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.

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seeking advice or representation from an independent lawyer of the party's choice; or (3) Communications otherwise authorized by law.		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.
CAL.RULE 2-100, DISCUSSION 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 communicating on his or her own behalf with a represented party …."	**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, 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	

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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.	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 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	

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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	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.	
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 client, or as a reward for having made a	**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."	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 considered removing the "joint responsibility" and proportional services requirements, but following public comment, determined not to recommend such change to the ABA's House of Delegates.] 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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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).
CAL. RULE 2-200(A) 1. **Cal. Rule 2-200(A)** provides the rule does not apply where the fee division is among partners or associates.	**MR 1.5 Comments** 1. Cmt. 8 notes that MR 1.5(e) does not apply to situation where lawyers who were previously associated in a law firm divide fees.	
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)	**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;	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**.

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CAL. RULE 2-300(A) Fees charged to clients shall not be increased solely by reason of such sale.	**MR 1.17(d)** The fees charged clients shall not be increased by reason of the sale."	
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 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	**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 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.	

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(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 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		

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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.		
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.	No corresponding Model Rule or Comment	
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.	No corresponding Model Rule or Comment	
CAL. RULE 2-300(E) Confidential information shall not be disclosed to a non-member in connection with a sale under this rule.	No corresponding Model Rule or Comment	
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.	No corresponding Model Rule or Comment	
CAL. RULE 2-400. PROHIBITED DISCRIMINATORY CONDUCT IN A LAW PRACTICE	No corresponding Model Rule or Comment, but see **MR 8.4(d)**, which provides it is professional misconduct for a lawyer to "(d) engage in conduct that is prejudicial to the	

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(A) For purpose of this rule: (1) "law practice" includes sole practices, law partnerships, law corporations, corporate and governmental legal departments and other entities which employ members to practice law; (2) "knowingly permit" means a failure to advocate corrective action where the member knows of a discriminatory policy or practice which results in the unlawful discrimination prohibited in paragraph (B); and (3) "unlawfully" and "unlawful" shall be determined by reference to applicable state or federal statutes or decisions making unlawful discrimination in employment and in offering goods and services to the public. (B) In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in: (1) hiring, promoting, discharging or otherwise determining the conditions of employment of any person; or (2) accepting or termination representation of any client. (C) No disciplinary investigation or proceeding may be initiated by the State Bar against a member under this rule unless and until a tribunal of competent jurisdiction, other	administration of justice." Some states that have adopted the Model Rules interpret "conduct that is prejudicial to the administration of justice" to encompass bias. *See, e.g.*, rule 8.4 as adopted in Florida, Illinois, North Dakota, and Rhode Island. To similar effect, see the Nebraska Code of Professional Responsibility, DR 1-102(A)(5).	

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than a disciplinary tribunal, shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred. Upon such adjudication, the tribunal finding or verdict shall then be admissible evidence of the occurrence or non-occurrence of the alleged discrimination in any disciplinary proceeding initiated under this rule. In order for discipline to be imposed under this rule, however, the finding of unlawfulness must be upheld and final after appeal, the time for filing an appeal must have expired, or the appeal must have been dismissed.		
CAL. RULE 2-400, DISCUSSION In order for discriminatory conduct to be actionable under this rule, it must first be found to be unlawful by an appropriate civil administrative or judicial tribunal under applicable state or federal law. Until there is a finding of civil unlawfulness, there is no basis for disciplinary action under this rule. A complaint of misconduct based on this rule may be filed with the State Bar following a finding of unlawfulness in the first instance even though that finding is thereafter appealed. A disciplinary investigation or proceeding for conduct coming within this rule may be initiated and maintained, however, if such conduct warrants discipline under California Business and Professions Code sections		

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6106 and 6068 the California Supreme Court's inherent authority to impose discipline, or other disciplinary standard.		
CAL. RULE 3-100(A) CONFIDENTIAL INFORMATION OF A CLIENT "(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."	**MR 1.6(a) 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)."	1. See also **B&P Code § 6068(e)**, page 166, *below*. 2. **CAL. 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). 3. **CAL. B&P CODE § 6068(E)(1)** provides: 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. 4. **CAL. B&P CODE § 6068(E)(2)** provides: "(e)(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." 5. **B&P CODE § 6068(E)** was given an operative date of 7/1/2004 to permit the

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		State Bar to develop the corresponding Rule 3-100. 6. **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. 7. 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).
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.	**MR 1.6(b)(1)** 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;	1. *See* Notes for **B&P Code § 6068(e)**, *above*. 2. Note that, unlike MR 1.6(b)(1), both **B&P CODE § 6068(E)(2)** and **CAL. 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 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. **MR 1.6, Cmt. 15** notes that MR 1.6(b) is permissive; disclosure is not mandated.
CAL. RULE 3-100(C) (C) Before revealing confidential	**MR 1.6, Cmt. 14** With respect to (C)(1), **MR 1.6, Cmt. 14** notes that "[p]aragraph (b) permits disclosure only	

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information to prevent a criminal act as provided in paragraph (B), a member shall, 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).	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."	
CAL. RULE 3-100(D) (D) 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.	**MR 1.6, Cmt. 14** **MR 1.6, Cmt. 14** 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."	
CAL. RULE 3-100(E) (E) A member who does not reveal information permitted by paragraph (B) does not violate this rule.	No corresponding Model Rule or Comment	
CAL. RULE 3-100, CASE LAW	**MR 1.6(b)(4)**	1. Although not identical, both the *Fox Searchlight* case and MR 1.6(b)(4) recognize that in some instances, a

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1. **FOX SEARCHLIGHT PICTURES, INC. V. PALADINO (2001) 89 Cal.App.4th 294, 106 Cal.Rptr.2d 906** (former in-house counsel permitted to disclose client confidential information to her own attorney to the extent they are relevant to her wrongful termination claim against the former client employer).	A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: * * * (4) to secure legal advice about the lawyer's compliance with these Rules	lawyer may need to disclose confidential information to his or her own lawyer.
CAL. RULE 3-100, DISCUSSION ¶. [1] [1] *Duty of confidentiality*. Paragraph (A) relates to a member's obligations under Business and Professions Code section 6068, subdivision (e)(1), which provides it is a duty of a member: "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." A member's duty to preserve the confidentiality of client information involves public policies of paramount importance. (*In Re Jordan* (1974) 12 Cal.3d 575, 580 [116 Cal.Rptr. 371].) Preserving the confidentiality of client information contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine	**MR 1.6, Cmt. 2** MR 1.6, cmt. 2, also sets out the policy underlying the duty of confidentiality, i.e., encouraging full & frank communication by the client.	

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their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld. Paragraph (A) thus recognizes a fundamental principle in the client-lawyer relationship, that, in the absence of the client's informed consent, a member must not reveal information relating to the representation. (See, e.g., *Commercial Standard Title Co. v. Superior Court* (1979) 92 Cal.App.3d 934, 945 [155 Cal.Rptr.393].)		
CAL. RULE 3-100, DISCUSSION ¶. [2] [2] *Client-lawyer confidentiality encompasses the attorney-client privilege, the work-product doctrine and ethical standards of confidentiality*. The principle of client-lawyer confidentiality applies to information relating to the representation, whatever its source, and encompasses matters communicated in confidence by the client, and therefore protected by the attorney-client privilege, matters protected by the work product doctrine, and matters protected under ethical standards of confidentiality, all as established in law, rule and policy. (See *In the Matter of Johnson* (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179; *Goldstein v. Lees* (1975) 46 Cal.3d 614, 621 [120 Cal. Rptr. 253].) The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a member may be called as a witness or be otherwise	**MR 1.6, Cmt. 3** MR 1.6, Cmt. 3 also distinguishes between the 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."	

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compelled to produce evidence concerning a client. A member's ethical duty of confidentiality is not so limited in its scope of protection for the client-lawyer relationship of trust and prevents a member from revealing the client's confidential information even when not confronted with such compulsion. Thus, a member may not reveal such information except with the consent of the client or as authorized or required by the State Bar Act, these rules, or other law.		
CAL. RULE 3-100, DISCUSSION ¶. [3] [3] *Narrow exception to duty of confidentiality under this Rule*. Notwithstanding the important public policies promoted by lawyers adhering to the core duty of confidentiality, the overriding value of life permits disclosures otherwise prohibited under Business & Professions Code section 6068(e), subdivision (1). Paragraph (B), which restates Business and Professions Code section 6068, subdivision (e)(2), identifies a narrow confidentiality exception, absent the client's informed consent, when a member reasonably believes that disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in the death of, or substantial bodily harm to an individual. Evidence Code section 956.5, which relates to the evidentiary attorney-client privilege, sets forth a similar express exception. Although a member is not permitted to reveal confidential information	**MR 1.6, cmt. 6** MR 1.6, Cmt. 6 discusses MR 1.6(b)(1), the life-threat exception to the duty of confidentiality.	

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concerning a client's past, completed criminal acts, the policy favoring the preservation of human life that underlies this exception to the duty of confidentiality and the evidentiary privilege permits disclosure to prevent a future or ongoing criminal act.		
CAL. RULE 3-100, DISCUSSION ¶. [4] [4] *Member not subject to discipline for revealing confidential information as permitted under this Rule*. Rule 3-100, which restates Business and Professions Code section 6068, subdivision (e)(2), reflects a balancing between the interests of preserving client confidentiality and of preventing a criminal act that a member reasonably believes is likely to result in death or substantial bodily harm to an individual. A member who reveals information as permitted under this rule is not subject to discipline.	No corresponding Model Rule or Comment	
CAL. RULE 3-100, DISCUSSION ¶. [5] [5] *No duty to reveal confidential information*. Neither Business and Professions Code section 6068, subdivision (e)(2) nor this rule imposes an affirmative obligation on a member to reveal information in order to prevent harm. (See rule 1-100(A).) A member may decide not to reveal confidential information. Whether a member chooses to reveal confidential information as permitted under this rule is a matter for the individual	No corresponding Model Rule or Comment	

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member to decide, based on all the facts and circumstances, such as those discussed in paragraph [6] of this discussion.		
CAL. RULE 3-100, DISCUSSION ¶. [6] [6] *Deciding to reveal confidential information as permitted under paragraph (B)*. Disclosure permitted under paragraph (B) is ordinarily a last resort, when no other available action is reasonably likely to prevent the criminal act. Prior to revealing information as permitted under paragraph (B), the member must, if reasonable under the circumstances, make a good faith effort to persuade the client to take steps to avoid the criminal act or threatened harm. Among the factors to be considered in determining whether to disclose confidential information are the following: (1) the amount of time that the member has to make a decision about disclosure; (2) whether the client or a third party has made similar threats before and whether they have ever acted or attempted to act upon them; (3) whether the member believes the member's efforts to persuade the client or a third person not to engage in the criminal conduct have or have not been successful; (4) the extent of adverse effect to the client's rights under the Fifth, Sixth and Fourteenth Amendments of the United	No corresponding Model Rule or Comment	

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States Constitution and analogous rights and privacy rights under Article 1 of the Constitution of the State of California that may result from disclosure contemplated by the member; (5) the extent of other adverse effects to the client that may result from disclosure contemplated by the member; and (6) the nature and extent of information that must be disclosed to prevent the criminal act or threatened harm. A member may also consider whether the prospective harm to the victim or victims is imminent in deciding whether to disclose the confidential information. However, the imminence of the harm is not a prerequisite to disclosure and a member may disclose the information without waiting until immediately before the harm is likely to occur.		
CAL. RULE 3-100, DISCUSSION ¶. [7] [7] *Counseling client or third person not to commit a criminal act reasonably likely to result in death of substantial bodily harm*. Subparagraph (C)(1) provides that before a member may reveal confidential information, the member must, if reasonable under the circumstances, make a good faith effort to persuade the client not to commit or to continue the criminal act, or to persuade the client to otherwise pursue a course of conduct that will prevent the threatened death	**MR 1.6, Cmt. 14** MR 1.6, Cmt. 14 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."	

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or substantial bodily harm, or if necessary, do both. The interests protected by such counseling is the client's interest in limiting disclosure of confidential information and in taking responsible action to deal with situations attributable to the client. If a client, whether in response to the member's counseling or otherwise, takes corrective action – such as by ceasing the criminal act before harm is caused – the option for permissive disclosure by the member would cease as the threat posed by the criminal act would no longer be present. When the actor is a nonclient or when the act is deliberate or malicious, the member who contemplates making adverse disclosure of confidential information may reasonably conclude that the compelling interests of the member or others in their own personal safety preclude personal contact with the actor. Before counseling an actor who is a nonclient, the member should, if reasonable under the circumstances, first advise the client of the member's intended course of action. If a client or another person has already acted but the intended harm has not yet occurred, the member should consider, if reasonable under the circumstances, efforts to persuade the client or third person to warn the victim or consider other appropriate action to prevent the harm. Even when the member has concluded that paragraph (B) does not permit the member to reveal confidential information, the member nevertheless is permitted to counsel the client as to why it may be in the client's best interest to consent to the		

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attorney's disclosure of that information.		
CAL. RULE 3-100, DISCUSSION ¶. [8] [8] *Disclosure of confidential information must be no more than is reasonably necessary to prevent the criminal act*. Under paragraph (D), disclosure of confidential information, when made, must be no more extensive than the member reasonably believes necessary to prevent the criminal act. Disclosure should allow access to the confidential information to only those persons who the member reasonably believes can act to prevent the harm. Under some circumstances, a member may determine that the best course to pursue is to make an anonymous disclosure to the potential victim or relevant law-enforcement authorities. What particular measures are reasonable depends on the circumstances known to the member. Relevant circumstances include the time available, whether the victim might be unaware of the threat, the member's prior course of dealings with the client, and the extent of the adverse effect on the client that may result from the disclosure contemplated by the member.	**MR 1.6, Cmt. 14** Cmt. 14 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."	
CAL. RULE 3-100, DISCUSSION ¶. [9] [9] *Informing client of member's ability or decision to reveal confidential information under subparagraph (C)(2)*. A member is	No corresponding Model Rule or Comment	

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required to keep a client reasonably informed about significant developments regarding the employment or representation. Rule 3-500; Business and Professions Code, section 6068, subdivision (m). Paragraph (C)(2), however, recognizes that under certain circumstances, informing a client of the member's ability or decision to reveal confidential information under paragraph (B) would likely increase the risk of death or substantial bodily harm, not only to the originally-intended victims of the criminal act, but also to the client or members of the client's family, or to the member or the member's family or associates. Therefore, paragraph (C)(2) requires a member to inform the client of the member's ability or decision to reveal confidential information as provided in paragraph (B) only if it is reasonable to do so under the circumstances. Paragraph (C)(2) further recognizes that the appropriate time for the member to inform the client may vary depending upon the circumstances. (See paragraph [10] of this discussion.) Among the factors to be considered in determining an appropriate time, if any, to inform a client are: (1) whether the client is an experienced user of legal services; (2) the frequency of the member's contact with the client; (3) the nature and length of the professional relationship with the client; (4) whether the member and client have		

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discussed the member's duty of confidentiality or any exceptions to that duty; (5) the likelihood that the client's matter will involve information within paragraph (B); (6) the member's belief, if applicable, that so informing the client is likely to increase the likelihood that a criminal act likely to result in the death of, or substantial bodily harm to, an individual; and (7) the member's belief, if applicable, that good faith efforts to persuade a client not to act on a threat have failed.		
CAL. RULE 3-100, DISCUSSION ¶. [10] [10] *Avoiding a chilling effect on the lawyer-client relationship*. The foregoing flexible approach to the member's informing a client of his or her ability or decision to reveal confidential information recognizes the concern that informing a client about limits on confidentiality may have a chilling effect on client communication. (See Discussion paragraph [1].) To avoid that chilling effect, one member may choose to inform the client of the member's ability to reveal information as early as the outset of the representation, while another member may choose to inform a client only at a point when that client has imparted information that may fall under paragraph (B), or even choose not to inform a	No corresponding Model Rule or Comment	

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client until such time as the member attempts to counsel the client as contemplated in Discussion paragraph [7]. In each situation, the member will have discharged properly the requirement under subparagraph (C)(2), and will not be subject to discipline.		
CAL. RULE 3-100, DISCUSSION ¶. [11] [11] *Informing client that disclosure has been made; termination of the lawyer-client relationship*. When a member has revealed confidential information under paragraph (B), in all but extraordinary cases the relationship between member and client will have deteriorated so as to make the member's representation of the client impossible. Therefore, the member is required to seek to withdraw from the representation (see rule 3-700(B)), unless the member is able to obtain the client's informed consent to the member's continued representation. The member must inform the client of the fact of the member's disclosure unless the member has a compelling interest in not informing the client, such as to protect the member, the member's family or a third person from the risk of death or substantial bodily harm.	No corresponding Model Rule or Comment	
CAL. RULE 3-100, DISCUSSION ¶. [12] [12] *Other consequences of the member's disclosure*. Depending upon the circumstances of a member's disclosure of	No corresponding Model Rule or Comment	

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confidential information, there may be other important issues that a member must address. For example, if a member will be called as a witness in the client's matter, then rule 5-210 should be considered. Similarly, the member should consider his or her duties of loyalty and competency (rule 3-110).		
CAL. RULE 3-100, DISCUSSION ¶. [13] [13] *Other exceptions to confidentiality under California law*. Rule 3-100 is not intended to augment, diminish, or preclude reliance upon, any other exceptions to the duty to preserve the confidentiality of client information recognized under California law.	No corresponding Model Rule or Comment	
CAL. RULE 3-110(A). FAILING TO ACT COMPETENTLY **CAL. RULE 3-110(A):** A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.	**MR 1.1**: **Competence** "A lawyer shall provide competent representation to a client.	1. California, unlike the MR's, requires that the lawyer's incompetence be intentional, reckless or repeated.
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)	**MR 1.3**: **Diligence** "A lawyer shall act with reasonable diligence and promptness in representing a client."	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)

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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.		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
CAL. RULE 3-110(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.	**MR 1.1** Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."	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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CAL. RULE 3-110(C). 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	**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. 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.
CAL. RULE 3-110, DISCUSSION	**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."	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.

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CAL. RULE 3-110, DISCUSSION No corresponding California rule or discussion, but see **Cal. Rule 3-110, Discussion**.	**MR 5.1(c)** A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (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."	
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**: **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. FAILING TO ACT COMPETENTLY * * * DISCUSSION "The duties set forth in rule 3-110 include the duty to supervise the work of *subordinate*	**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	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

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attorney and non-attorney employees or agents. (citations omitted).” (Emphasis added).	measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.”	make similar efforts to ensure that lawyer’s conduct conforms to the rules. Rule 3-110 does not expressly require either, but:
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. (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	**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.”	

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discipline under this rule solely because of the occurrence of such sexual relations.		
CAL. RULE 3-120, DISCUSSION ¶. 1, 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.	**MR 1.8, 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.	
CAL. RULE 3-120, DISCUSSION ¶.2, which provides: "For purposes of this rule, if the client is an organization, any individual overseeing the representation shall be deemed to be the client. (See rule 3- 600.)"	**MR 1.8, 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 concerning the organization's legal matters."	
CAL. RULE 3-120, DISCUSSION ¶. 3, provides: "Although paragraph (C) excludes representation of certain clients from the scope of rule 3-120, such exclusion is not	No corresponding Model Rule or Comment.	

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intended to preclude the applicability of other Rules of Professional Conduct, including rule 3-110."		
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 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	**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 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."	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 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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commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest."		
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 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."	**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 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."	1. Other California Rules arguably relevant here include **CAL. RULE 3-200** ("Prohibited Objectives of Employment") and **CAL. B&P CODE § 6103** ("Sanctions for Violation of Oath or Attorney's Duties")
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	**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	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.)

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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."	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. **CAL. B&P CODE § 6147.**	**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 3-700(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.
CAL. RULE 3-300, DISCUSSION ¶. 1, 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."	**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).	

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CAL. RULE 3-300, DISCUSSION ¶¶. 2 & 3 Rule 3-300 is not intended to apply where the member and client each make an investment on terms offered to the general public or a significant portion thereof. For example, rule 3-300 is not intended to apply where A, a member, invests in a limited partnership syndicated by a third party. B, A's client, makes the same investment. Although A and B are each investing in the same business, A did not enter into the transaction "with" B for the purposes of the rule. Rule 3-300 is intended to apply where the member wishes to obtain an interest in client's property in order to secure the amount of the member's past due or future fees.	No corresponding Model Rule or Comment	
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;	**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.	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

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		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 Explanation of Changes to MR 1.0. 3. See MR 1.0, cmts. 6 & 7.
CAL. RULE 3-310(A)(3). AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS "(A) For purposes of this rule: * * * (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(n)** "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, 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.	1. Unlike MR 1.0(n), Evidence Code § 250 makes no mention of electronic signatures.
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, 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	**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 interest of the lawyer."	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 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

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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."		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."
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 …."]	**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 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."	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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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."	**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**	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."
CAL. RULE 3-310(C)(4). ["PHANTOM"]. (C) A member shall not, without the informed written consent of each client: (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.~~ Accept representation of a person or entity the member knows or reasonably should know is an opposing party to a client in a separate matter in which the member or the member's law firm currently represents	**MR 1.7, 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	

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the client. (4) Accept representation of a person or entity in a litigation matter in which the member knows or reasonably should know an opposing party is a client of the member or the member's law firm, except as otherwise permitted or required by law.	unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.	
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."	**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."	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."
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."	**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."	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).

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CAL. RULE 3-310(E), above.	**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 consent, confirmed in writing."	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 the migrating lawyer's "former client," and the lawyer likely would have obtained the confidential information by "representation of the client."
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 disclosure or consent is required if: (a) such nondisclosure is otherwise authorized by law; or	**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."	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 Diego Navy Federal Credit Union v. Cumis Insurance Society (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].)"

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(b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.		
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 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(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.	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].)"
CAL. RULE 3-310, DISCUSSION, ¶.1, 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."	**MR 1.7, 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	

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	will materially limit the lawyer's effectiveness in representing another client in a different case."	
CAL. RULE 3-310, DISCUSSION ¶.2, 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).)"	**MR 1.7, 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.	
CAL. RULE 3-310, DISCUSSION ¶. 3, provides: "Paragraph (B) is not intended to apply to the relationship of a member to another party's lawyer. Such relationships are governed by rule 3-320."	No corresponding Model Rule or Comment.	
CAL. RULE 3-310, DISCUSSION ¶. 4, provides: "Paragraph (B) is not intended to require either the disclosure of the new engagement to a former client or the consent of the former client to the new engagement. However, such disclosure or consent is required if paragraph (E) applies."	No corresponding Model Rule or Comment.	
CAL. RULE 3-310, DISCUSSION ¶. 5, 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**, 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	**MR 1.7, 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).	

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interest in the subject matter of the representation."		
CAL. RULE 3-310, DISCUSSION ¶.7, 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."	**MR 1.7, Cmt. 7** notes directly adverse conflicts can also arise in transactional matters.	
CAL. RULE 3-310, DISCUSSION ¶.9, 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 (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592].) See also **CAL. RULE 3-120** [sex with client], which is a non-consentable conflict.	**MR 1.7, Cmts. 14-17** deal with "non-consentable" conflicts identified in MR 1.7(b)(1)-(3).	
CAL. RULE 3-310, DISCUSSION ¶.10, provides: "Paragraph (D) is not intended to apply to class action settlements subject to court approval."	**MR 1.8, 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	

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	protection of the entire class."	
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 Society (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].)"	**MR 1.8, 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 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.	
CAL. RULE 3-310, CASE LAW 1. **ZADOR CORP. V. KWAN (CAL.APP. 1995) 31 CAL.APP.4TH 1285, 37 CAL.RPTR.2D 754**.	1. **MR 1.7, 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	

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2. **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). *See also* **JESSEN V. HARTFORD CASUALTY INS. CO. (2003) 111 CAL.APP.4TH 698, 3 CAL.RPTR.3D 877.**	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." 2. **MR 1.9, 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. **MR 1.9, Cmts. 4-7** address MR 1.9(b),	

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3. **ADAMS V. AEROJET-GENERAL 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**.	which concerns migration of lawyers between 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	

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	should rest upon the firm whose 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.	
CAL. RULE 3-310, IMPUTATION I See Notes & Comments	**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."	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".
CAL. RULE 3-310, IMPUTATION II See Notes & Comments	**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 1.9(c) that is material to the matter."	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.
CAL. RULE 3-310, IMPUTATION III	**MR 1.10(d)** The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule	

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No corresponding California rule.	1.11."	
CAL. RULE 3-310, IMPUTATION IV 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 <u>In re Complex Asbestos Litigation</u> (Cal.App. 1991)283 Cal.Rptr. 732; and as to lawyer prohibited from acting because of events before she because a lawyer, see <u>Allen v. Academic Games League of America, Inc.</u> (C.D. Cal. 1993) 831 F.Supp. 785.	**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 "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	

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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	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.	
CAL. RULE 3-320. RELATIONSHIP WITH OTHER PARTY'S LAWYER A member shall not represent a client in a matter in which another party's lawyer is a spouse, parent, child, or sibling of the member, lives with the member, is a client of the member, or has an intimate personal relationship with the member, unless the member informs the client in writing of the relationship.	No corresponding Model Rule or Comment.	

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DISCUSSION Rule 3-320 is not intended to apply to circumstances in which a member fails to advise the client of a relationship with another lawyer who is merely a partner or associate in the same law firm as the adverse party's counsel, and who has no direct involvement in the matter.		
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."	**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."	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 advisable. [Note: Again, Ethics 2000 appears to have come around to the California approach]
CAL. RULE 3-400, DISCUSSION 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	**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."	1. Consider limited representation ("unbundling") in California

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member's employment or representation."	**MR 1.8, Cmts. 14 and 15**, also 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.") 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).	
		1.
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)** "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	**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 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	2. *See also* **CAL. RULE 3-510** (Communication of Settlement Offer) 3. Per **CAL. RULE 3-500**, **DISCUSSION** a lawyer will not be disciplined for failing to communicated insignificant or irrelevant information.

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the attorney has agreed to provide legal services."	when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law."	
CAL. RULE 3-500, DISCUSSION Rule 3-500 is not intended to change a member's duties to his or her clients. It is intended to make clear that, while a client must be informed of significant developments in the matter, a member will not be disciplined for failing to communicate insignificant or irrelevant information. (See Bus. & Prof.Code, § 6068, subd. (m).) A member may contract with the client in their employment agreement that the client assumes responsibility for the cost of copying significant documents. This rule is not intended to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding. Rule 3-500 is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the member to provide work product to the client shall be governed by relevant statutory and decisional law. Additionally, this rule is not intended to apply to any document or correspondence that is subject to a protective order or non-disclosure agreement, or to override applicable statutory or decisional law requiring that certain information not be	**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 should be in regular communication with the client (and return phone calls!) 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	

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provided to criminal defendants who are clients of the member.	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." 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. 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."	
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.	**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	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

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	whether the client will testify."	
CAL. RULE 3-510, DISCUSSION. Rule 3-510 is intended to require that counsel in a criminal matter convey all offers, whether written or oral, to the client, as give and take negotiations are less common in criminal matters, and, even were they to occur, such negotiations should require the participation of the accused. Any oral offers of settlement made to the client in a civil matter should also be communicated if they are "significant" for the purposes of rule 3-500.	No corresponding Model Rule or Comment.	
CAL. RULE 3-600. ORGANIZATION AS CLIENT **CAL. RULE 3-600(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.	**MR 1.13: Organization As Client** "(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."	1. Rule 3-600 is very similar to MR 1.13
CAL. RULE 3-600(B) If a member acting on behalf of an organization knows that an 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	**MR 1.13(b)** If a lawyer for an organization knows that an officer, employee or other 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	1. The suggested actions in paragraph (b) of both rules are not exclusive ("Such actions *may include among others*:")

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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.	reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, 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 the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in on behalf of the organization as determined by applicable law."	
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	**MR 1.13(c)** If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the	

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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.	organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16."	
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.	**MR 1.13(d)** 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(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 individual or constituent who is to be represented, or by the shareholder(s) or organization members."	**MR 1.13(e)** 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 individual who is to be represented, or by the shareholders."	

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CAL. RULE 3-600, DISCUSSION ¶. 1, provides: "Rule 3-600 is not intended to enmesh members in the intricacies of the entity and aggregate theories of partnership."	No corresponding Model Rule or Comment	
CAL. RULE 3-600, DISCUSSION ¶. 2, 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."	**MR 1.13, Cmt. 9** states the organization's lawyer may also represent an officer or major shareholder.	
CAL. RULE 3-600, DISCUSSION ¶. 3, 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 1.13, Cmts. 10 and 11** consider derivative actions. Cmt. 11 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."	
CAL. RULE 3-700(A)(1) In General. (1) If permission for termination of	**MR 1.16(c)** A lawyer must comply with applicable law requiring notice to or	

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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.	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)(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 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.	**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."	

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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.		
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: 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(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	**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	

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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 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	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 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."	

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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 a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.		
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(b)** representing the client is likely to result in an unreasonable financial burden on the lawyer; or	
CAL. RULE 3-700(D)(1) provides that a member whose employment has terminated shall "(2) 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 representation, whether the client has paid for them or not."	No corresponding Model Rule or Comment.	
CAL. RULE 3-700(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	**MR 1.5 Cmt. 4** 2. Cmt. 4 states unearned advance fees must be returned to client. It also notes that lawyer may take fee in property, but	

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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, by rule 4-200." (emphasis added)	usually such fees will also be subject to MR 1.8(a), the rule concerning business transactions with clients.	
CAL. RULE 3-700, DISCUSSION ¶. 1, 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."	**MR 1.16, 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]."	
CAL. RULE 3-700, DISCUSSION ¶. 2, provides: "Paragraph (D) makes clear the member's duties in the recurring situation in which new counsel seeks to obtain client files from a member discharged by the client. It codifies existing case law. (See Academy of California Optometrists v. Superior Court (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668]; Weiss v. Marcus (1975) 51 Cal.App.3d 590 [124 Cal.Rptr. 297].) Paragraph (D) also requires that the member "promptly" return unearned fees paid in advance. If a client disputes the amount to be returned, the member shall comply with rule 4-100(A)(2)."	No corresponding Model Rule or Comment.	

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CAL. RULE 3-700, DISCUSSION ¶. 3, provides: "Paragraph (D) is not intended to prohibit a member from making, at the member's own expense, and retaining copies of papers released to the client, nor to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding."	No corresponding Model Rule or Comment.	
CAL. RULE 3-700, CASE LAW **FRACASSE V. BRENT (1972) 6 CAL.3D 784, 494 P.2D 9, 100 CAL.RPTR. 385**.	**MR 1.16, 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."	
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	**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	

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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.	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) 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 . . . ."	**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."	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.
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."	**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."	

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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."	**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."	1. Rule 4-100 does not provide for notice to third persons.
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	No corresponding Model Rule	

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and binding on all members."		
CAL. RULE 4-100, STANDARDS Pursuant to rule 4-100(C) the Board of Governors of the State Bar has adopted the following standards, effective January 1, 1993, as to what "records" shall be maintained by members and law firms in accordance with subparagraph (B)(3). (1) A member shall, from the date of receipt of client funds through the period ending five years from the date of appropriate disbursement of such funds, maintain: (a) a written ledger for each client on whose behalf funds are held that sets forth (i) the name of such client, (ii) the date, amount and source of all funds received on behalf of such client, (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client, and (iv) the current balance for such client; (b) a written journal for each bank account that sets forth (i) the name of such account, (ii) the date, amount and client affected by each debit and credit, and (iii) the current balance in such account; (c) all bank statements and cancelled checks for each bank account; and (d) each monthly reconciliation (balancing) of	**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."	

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(a), (b), and (c). (2) A member shall, from the date of receipt of all securities and other properties held for the benefit of client through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written journal that specifies: (a) each item of security and property held; (b) the person on whose behalf the security or property is held; (c) the date of receipt of the security or property; (d) the date of distribution of the security or property; and (e) person to whom the security or property was distributed.		
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	**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	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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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]** (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*.	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 4-210. PAYMENT OF PERSONAL OR BUSINESS EXPENSES INCURRED BY OR FOR A CLIENT (A) A member shall not directly or indirectly	**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	1. Unlike MR 1.8(e), rule 4-210 is not limited to providing financial assistance in "pending or contemplated litigation."

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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 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.	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."	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) 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.
CAL. RULE 4-300. PURCHASING PROPERTY AT A FORECLOSURE OR A SALE SUBJECT TO JUDICIAL REVIEW (A) A member shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an	No corresponding Model Rule or Comment	

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action or proceeding in which such member or any lawyer affiliated by reason of personal, business, or professional relationship with that member or with that member's law firm is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator. (B) A member shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the member or of another lawyer in the member's law firm or is an employee of the member or the member's law firm.		
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."	**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 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."	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 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

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		CAL. B&P CODE § 6103.6, violation of Probate Code § 21350 et seq. is a ground for discipline.
CAL. RULE 4-400, DISCUSSION 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 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].)"	**MR 1.8, 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 named as executor, trustee, etc., subject to rule 1.7(a)(2) (material limitation on that lawyer's independent professional judgment).	
CAL. RULE 5-100. THREATENING CRIMINAL, ADMINISTRATIVE, OR DISCIPLINARY CHARGES (A) A member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute. (B) As used in paragraph (A) of this rule, the term "administrative charges" means the filing or lodging of a complaint with a federal, state, or local governmental entity which may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an	1. No corresponding Model Rule or Comment. 2. The District of Columbia provides it is misconduct to: "(g) Seek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter." D.C. RPC 8.4(g). 3. A few other states prohibit similar conduct under different sections (e.g., Alabama RPC 3.10; S.C. RPC 4.5; Vermont RPC 4.5; Wisconsin 3.10) 4. The few remaining Model Code states (Iowa, Nebraska, New York, Ohio and Maine) have DR 7-105, which provides: "A lawyer shall not present, participate in presenting, or threaten to present criminal	

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administrative entity required by law as a condition precedent to maintaining a civil action. (C) As used in paragraph (A) of this rule, the term "civil dispute" means a controversy or potential controversy over the rights and duties of two or more parties under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.	charges solely in order to obtain an advantage in a civil matter."	
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."	**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;"	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.
CAL. RULE 5-120(A). TRIAL PUBLICITY "(A) A member who is participating or has	**MR 3.6(a). Trial Publicity** "(a) A lawyer who is participating or has	1. No corresponding California rule or discussion as to the requirement to exercise reasonable care to prevent

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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.	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." **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."	investigators, etc. from making an extrajudicial statement.
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	**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;	

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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 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.	(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 (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."	
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(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, DISCUSSION ¶.1 provides: "5-120 is intended to apply equally to prosecutors and criminal defense counsel."	**MR 3.6, 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."	
CAL. RULE 5-120, DISCUSSION ¶.2, provides: "Whether an extrajudicial statement violates	**MR 3.6, Cmt. 4** elaborates on paragraph (b), which identifies statements that ordinarily	

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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 criminal proceedings); and (4) the timing of the statement."	would not cause a "substantial likelihood of material prejudice," and notes it "is not intended to be an exhaustive listing of the subjects …." **MR 3.6, 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 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."	
CAL. RULE 5-120, DISCUSSION ¶.3, provides: "Paragraph (A) is intended to apply to statements made by *or on behalf of* the member." (emphasis added)	**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)."	
	MR 3.3: Candor Toward The Tribunal	2. *See also* **CAL. B&P CODE § 6068(D)**.

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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 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."	"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 **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." **MR 3.4(e)** A lawyer shall not "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 litigant or the guilt or innocence of an accused."	3. **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." 4. Note that the recently-repealed first phrase of **CAL. B&P CODE § 6068(f)** ("To abstain from all offensive personality") approximated MR 8.4(d). 5. 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.

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	MR 8.4(d) It is misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice;" **MR 8.4(e)** It is misconduct for a lawyer to "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."	
CAL. RULE 5-200. CASE LAW **STATE COMPENSATION INSURANCE FUND V. WPS, INC. (1999) 70 CAL.APP.4TH 644, 82 CAL.RPTR.2D 799.**	**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."	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.
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	**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."	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

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employed and shall be consistent with principles of recusal.		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."
CAL. RULE 5-210, DISCUSSION ¶.1, provides: "Rule 5-210 is intended to apply to situations in which the member knows or should know that he or she ought to be called as a witness in litigation in which there is a jury. This rule is not intended to encompass situations in which the member is representing the client in an adversarial proceeding and is testifying before a judge. In non-adversarial proceedings, as where the member testifies on behalf of the client in a hearing before a legislative body, rule 5-210 is not applicable."	No corresponding Model Rule or Comment.	
CAL. RULE 5-210, DISCUSSION ¶.2: 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."	**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 5-220. 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(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	

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	evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false." **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 5-300(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: 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. CONTACT WITH OFFICIALS * * *	**MR 3.3(d)** In an ex parte proceeding, a lawyer shall inform the tribunal of all material	1. MR 3.3(d) imposes on the lawyer a special duty of candor in ex parte proceedings to ensure the judge makes

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"(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." (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."	facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." **MR 3.5(b)** communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;"	an informed decision. Rule 5-300(B)(5) simply permits a lawyer to communicate with a judge in an ex parte matter.
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."	**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."	1. *See also* **CAL. RULE 5-220** ("Suppression of Evidence")
CAL. RULE 5-310. PROHIBITED CONTACT WITH WITNESSES A member shall not: * * * "(B) Directly or indirectly pay, offer to pay, or	**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 law;"	1. *See also* **CAL. B&P CODE § 6068(d)**.

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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."		
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	**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"	

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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 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.		

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CAL. RULE OF COURT 964. REGISTERED LEGAL SERVICES ATTORNEYS *Statement of Purpose*. The purpose of this rule is to permit an attorney who relocates to California and who is licensed to practice law in one or more jurisdictions in the United States other than California to practice law in California under a registration system without becoming a member of the State Bar of California. An attorney so registered may practice law in California for no more than three years and during that period must do so under the supervision of an attorney employed by a qualifying legal service provider. **Rule 964. Registered Legal Services Attorneys** (a) [**Scope of practice**] Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule is permitted to practice law in California only while working, with or without pay, at a qualifying legal services provider, as defined in this rule, and, at that institution and only on behalf of its clients, may engage, under supervision, in all forms of legal practice that are permissible for a member of the State Bar of California. (b) [**Requirements**] For an attorney to practice law under this rule, the attorney	**MR 5.5(c)(1)**: "A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a 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.	1. **MR 5.5(c)(1)** appears to be inconsistent with *Birbrower*, *supra*, 17 Cal.4th at 126 fn.3. 2. 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. Note also that **MR 5.5(c)(1)** applies to lawyers who are providing legal services on a "temporary basis," whereas Rule of Court 964 by its terms contemplates that the legal services lawyer may practice up to three years before he or she must obtain admission to the California Bar.

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must: (1) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency; (2) Register with the State Bar of California and file an Application for Determination of Moral Character; (3) Meet all of the requirements for admission to the State Bar of California, except that the attorney: (A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and (B) May practice law while awaiting the result of his or her Application for Determination of Moral Character; (4) Comply with the rules adopted by the Board of Governors relating to the State Bar Registered Legal Services Attorney Program; (5) Practice law exclusively for a single qualifying legal services provider, except that if so qualified, an attorney may, while practicing under this rule, simultaneously practice law as registered in-house counsel; (6) Practice law under the supervision of an attorney who is employed by the qualifying legal services provider and who is a member in good standing of the State		

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Bar of California; (7) Abide by all of the laws and rules that govern members of the State Bar of California, including the Minimum Continuing Legal Education (MCLE) requirements; (8) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that members of the State Bar of California must complete every three years; and (9) Not have taken and failed the California bar examination within five years immediately preceding application to register under this rule. (c) [**Application**] To qualify to practice law as a registered legal services attorney, the attorney must: (1) Register as an attorney applicant and file an Application for Determination of Moral Character with the Committee of Bar Examiners; (2) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than under supervision at a qualifying legal services provider during the time he or she practices law as a registered legal		

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services attorney in California, except that if so qualified, the attorney may, while practicing under this rule, simultaneously practice law as registered in-house counsel; and (3) Submit to the State Bar of California a declaration signed by a qualifying supervisor on behalf of the qualifying legal services provider in California attesting that the applicant will work, with or without pay, as an attorney for the organization; that the applicant will be supervised as specified in this rule; and that the qualifying legal services provider and the supervising attorney assume professional responsibility for any work performed by the applicant under this rule. (d) [**Duration of practice**] An attorney may practice for no more than a total of three years under this rule. (e) [**Fees**] The State Bar of California may set appropriate initial and annual registration fees, as well as application fees, to be paid by registered legal services attorneys. (f) [**State Bar Registered Legal Services Attorney Program**] The State Bar may establish and administer a program for registering California legal services attorneys under rules adopted by the Board of Governors of the State Bar. (g) [**Supervision**] To meet the requirements of this rule, an attorney supervising a		

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registered legal services attorney: (1) Must be an active member in good standing of the State Bar of California; (2) Must have actively practiced law in California and been a member in good standing of the State Bar of California for at least the two years immediately preceding the time of supervision; (3) Must have practiced law as a full-time occupation for at least four years; (4) Must not supervise more than two registered legal services attorneys concurrently; (5) Must assume professional responsibility for any work that the registered legal services attorney performs under the supervising attorney's supervision; (6) Must assist, counsel, and provide direct supervision of the registered legal services attorney in the activities authorized by this rule and review such activities with the supervised attorney, to the extent required for the protection of the client; (7) Must read, approve, and personally sign any pleadings, briefs, or other similar documents prepared by the registered legal services attorney before their filing, and must read and approve any documents prepared by the registered legal services attorney for execution by		

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any person who is not a member of the State Bar of California before their submission for execution; and (8) May, in his or her absence, designate another attorney meeting the requirements of (1) through (7) to provide the supervision required under this rule. (h) [Inherent power of Supreme Court] Nothing in this rule is to be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California. (i) [**Effect of rule on multijurisdictional practice**] Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not members of the State Bar of California. (j) [**Definitions**] The following definitions apply to terms used in this rule: (1) "Qualifying legal services provider" means either of the following, provided that the qualifying legal services provider follows quality-control procedures approved by the State Bar of California: (A) A nonprofit entity incorporated and operated exclusively in California that as its primary purpose and function provides legal services without charge in civil matters to indigent persons, especially underserved client groups, such as the elderly, persons with disabilities, juveniles, and non-		

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English- speaking persons; or (B) A program operated exclusively in California by a nonprofit law school approved by the American Bar Association or accredited by the State Bar of California that has operated for at least two years at a cost of at least $20,000 per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons. (2) "Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who meets all of the following criteria: (A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law; (B) Remains an active member in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law as a registered legal services attorney in California; and (C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.		

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CAL. RULE OF COURT 965. REGISTERED IN-HOUSE COUNSEL *Statement of Purpose*. The purpose of this rule is to permit an attorney who resides in California and who is licensed to practice law in one or more jurisdictions in the United States other than California to register to provide legal services as in-house counsel for a single qualifying institution in California without becoming a member of the State Bar of California. **Rule 965. Registered In-House Counsel** (a) [**Scope of practice**] Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule: (1) Is permitted to provide legal services in California only to the qualifying institution that employs him or her; (2) Is not permitted to make court appearances in California state courts or to engage in any other activities for which pro hac vice admission is required if they are performed in California by an attorney who is not a member of the State Bar of California; and (3) Is not permitted to provide personal or individual representation to any customers, shareholders, owners, partners, officers, employees, servants, or agents of the qualifying institution.	**MR 5.5(d)(1)**: (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;	1. Both **CAL. RULE OF COURT 965** and **MR 5.5(d)(1)** prohibit an in-house lawyer from making appearances in court on behalf of the organization.

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(b) [**Requirements**] For an attorney to practice law under this rule, the attorney must: (1) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency; (2) Register with the State Bar of California and file an Application for Determination of Moral Character; (3) Meet all of the requirements for admission to the State Bar of California, except that the attorney: (A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and (B) May practice law while awaiting the result of his or her Application for Determination of Moral Character; (4) Comply with the rules adopted by the Board of Governors relating to the State Bar Registered In-House Counsel Program; (5) Practice law exclusively for a single qualifying institution, except that, while practicing under this rule, the attorney may, if so qualified, simultaneously practice law as a registered legal services attorney; (6) Abide by all of the laws and rules that govern members of the State Bar of California, including the Minimum		

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Continuing Legal Education (MCLE) requirements; (7) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that members of the State Bar of California must complete every three years and, thereafter, satisfy the MCLE requirements applicable to all members of the State Bar; and (8) Reside in California. (c) [**Application**] To qualify to practice law as registered in-house counsel, an attorney must: (1) Register as an attorney applicant and file an Application for Determination of Moral Character with the Committee of Bar Examiners; (2) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than on behalf of the qualifying institution during the time he or she is registered in-house counsel in California, except that if so qualified, the attorney may, while practicing under this rule, simultaneously practice law as a registered legal services attorney; and (3) Submit to the State Bar of California a		

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declaration signed by an officer, a director, or a general counsel of the applicant's employer, on behalf of the applicant's employer, attesting that the applicant is employed as an attorney for the employer, that the nature of the employment conforms to the requirements of this rule, that the employer will notify the State Bar of California within 30 days of the cessation of the applicant's employment in California, and that the person signing the declaration believes, to the best of his or her knowledge after reasonable inquiry, that the applicant qualifies for registration under this rule and is an individual of good moral character. (d) [**Duration of practice**] Registered in-house counsel must renew his or her registration annually. There is no limitation on the number of years in-house counsel may register under this rule. Registered in-house counsel may practice law under this rule only for as long as he or she remains employed by the same qualifying institution that provided the declaration in support of his or her application. If an attorney practicing law as registered in-house counsel leaves the employment of his or her employer or changes employers, he or she must notify the State Bar of California within 30 days. If an attorney wishes to practice law under this rule for a new employer, he or she must first register as in-house counsel for that employer.		

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(e) [**Eligibility**] It will not be grounds for denial of an application to register under this rule if the attorney applicant has practiced law in California as in-house counsel before the effective date of this rule. Further, it will not be grounds for denial of an application to register under this rule if the attorney applicant is practicing law as in-house counsel at or after the effective date of this rule, provided that the attorney applies under this rule within six months of its effective date. (f) [**Fees**] The State Bar of California may set appropriate initial and annual registration fees, as well as application fees, to be paid by registered in- house counsel. (g) [**State Bar Registered In-House Counsel Program**] The State Bar may establish and administer a program for registering California in- house counsel under rules adopted by the Board of Governors. (h) [**Inherent power of Supreme Court**] Nothing in this rule is to be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California. (i) [**Effect of rule on multijurisdictional practice**] Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not members of the State Bar of California. (j) [**Definitions**] The following definitions apply to terms used in this rule: (1) "Qualifying institution" means a		

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corporation, a partnership, an association, or other legal entity, including its subsidiaries and organizational affiliates. Neither a governmental entity nor an entity that provides legal services to others can be a qualifying institution for purposes of this rule. A qualifying institution must: (A) Employ at least 10 employees full-time in California; or (B) Employ in California an attorney who is an active member in good standing of the State Bar of California. (2) "Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who meets all of the following criteria: (A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law; (B) Remains an active member in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency, other than California, while practicing law as registered in-house counsel in California; and (C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in		

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any other jurisdiction.		
CAL. RULE OF COURT 966. ATTORNEYS PRACTICING LAW TEMPORARILY IN CALIFORNIA AS PART OF LITIGATION *Statement of Purpose*. The purpose of this rule is to permit an attorney who is licensed to practice law in a jurisdiction in the United States other than California, and who is in California temporarily as part of litigation, to perform litigation tasks in California under specified circumstances. An attorney practicing in accordance with this rule is not engaged in the unauthorized practice of law in California. **Rule 966. Attorneys practicing law temporarily in California as part of litigation** (a) [**Requirements**] For an attorney to practice law under this rule, the attorney must: (1) Maintain an office in a United States jurisdiction other than California and in which the attorney is licensed to practice law; (2) Already be retained by a client in the matter for which the attorney is providing legal services in California, except that the attorney may provide legal advice to a potential client, at the potential client's request, to assist the client in deciding		1. *See also* **CAL. RULE OF COURT 983**, which regulates pro hac vice admission in California. 2. Concerning **MR 5.5(c)(2)**, **MR 5.5(c)(3)** and **CAL. RULE OF COURT 966(b)**, **CAL. RULE OF COURT 966(g)(1)** defines "formal legal proceeding" as "litigation, ***arbitration, mediation***, or a legal action before an administrative decision-maker." (Emphasis added). 3. Other California statutes and rules of court that address the participation of non-California-licensed attorneys in arbitrations and other ADR activities 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).

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whether to retain the attorney; (3) Indicate on any Web site or other advertisement that is accessible in California either that the attorney is not a member of the State Bar of California or that the attorney is admitted to practice law only in the states listed; and (4) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency.		
(b) [**Permissible activities**] An attorney meeting the requirements of this rule, who complies with all applicable rules, regulations, and statutes, is not engaging in the unauthorized practice of law in California if the attorney's services are part of: (1) A formal legal proceeding that is pending in another jurisdiction and in which the attorney is authorized to appear; (2) A formal legal proceeding that is anticipated but is not yet pending in California and in which the attorney reasonably expects to be authorized to appear; (3) A formal legal proceeding that is anticipated but is not yet pending in another jurisdiction and in which the attorney reasonably expects to be authorized to appear; or (4) A formal legal proceeding that is	**CAL. RULE OF COURT 966(b)(2)-(4)**. *See* **MR 5.5(c)(2)** and **MR 5.5(c)(3)**: "A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that: * * * (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	

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anticipated or pending and in which the attorney's supervisor is authorized to appear or reasonably expects to be authorized to appear. The attorney whose anticipated authorization to appear in a formal legal proceeding serves as the basis for practice under this rule must seek that authorization promptly after it becomes possible to do so. Failure to seek that authorization promptly, or denial of that authorization, ends eligibility to practice under this rule. (c) [**Restrictions**] To qualify to practice law in California under this rule, an attorney must not: (1) Hold out to the public or otherwise represent that he or she is admitted to practice law in California; (2) Establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; (3) Be a resident of California; (4) Be regularly employed in California; (5) Regularly engage in substantial business or professional activities in California; or (6) Have been disbarred, have resigned with charges pending, or be suspended from practicing law in any other jurisdiction. (d) [**Conditions**] By practicing law in	vice admission; **CAL. RULE OF COURT 966(c)(1)**. *See* **MR 5.5(b)(2)**: "A lawyer who is not admitted to practice in this jurisdiction shall not: * * * (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction." **CAL. RULE OF COURT 966(c)(2)**. *See* **MR 5.5(b)(1)**: "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	

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California pursuant to this rule, an attorney agrees that he or she is providing legal services in California subject to: (1) The jurisdiction of the State Bar of California; (2) The jurisdiction of the courts of this state to the same extent as is a member of the State Bar of California; and (3) The laws of the State of California relating to the practice of law, the State Bar Rules of Professional Conduct, the rules and regulations of the State Bar of California, and these rules. (e) [**Inherent power of Supreme Court**] Nothing in this rule is to be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California. (f) [**Effect of rule on multijurisdictional practice**] Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not members of the State Bar of California. (g) [**Definitions**] The following definitions apply to the terms used in this rule: (1) "A formal legal proceeding" means litigation, arbitration, mediation, or a legal action before an administrative decision-maker. (2) "Authorized to appear" means the attorney is permitted to appear in the proceeding by the rules of the jurisdiction		

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in which the formal legal proceeding is taking place or will be taking place. (3) "Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who meets all of the following criteria: (A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law; (B) Remains an active member in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency while practicing law under this rule; and (C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.		
CAL. RULE OF COURT 967. NON LITIGATING ATTORNEYS TEMPORARILY IN CALIFORNIA TO PROVIDE LEGAL SERVICES *Statement of Purpose*. The purpose of this rule is to permit an attorney who is licensed to practice law in a jurisdiction in the United States other than California, and who is in California temporarily other than as part of litigation, to practice law to a limited extent in		1. *See also* **CAL. B&P CODE § 6125**.

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California. An attorney practicing under this rule is not engaged in the unauthorized practice of law in California. **Rule 967. Non litigating attorneys temporarily in California to provide legal services** (a) [**Requirements**] For an attorney to practice law under this rule, the attorney must: (1) Maintain an office in a United States jurisdiction other than California and in which the attorney is licensed to practice law; (2) Already be retained by a client in the matter for which the attorney is providing legal services in California, except that the attorney may provide legal advice to a potential client, at the potential client's request, to assist the client in deciding whether to retain the attorney; (3) Indicate on any Web site or other advertisement that is accessible in California either that the attorney is not a member of the State Bar of California or that the attorney is admitted to practice law only in the states listed; and (4) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency. (b) [**Permissible activities**] An attorney who		

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meets the requirements of this rule and who complies with all applicable rules, regulations, and statutes is not engaging in the unauthorized practice of law in California if the attorney: (1) Provides legal assistance or legal advice in California to a client concerning a transaction or other nonlitigation matter, a material aspect of which is taking place in a jurisdiction other than California and in which the attorney is licensed to provide legal services; (2) Provides 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; or (3) Is an employee of a client and provides legal assistance or legal advice in California to the client or to the client's subsidiaries or organizational affiliates. (c) [**Restrictions**] To qualify to practice law in California pursuant to this rule, an attorney must not: (1) Hold out to the public or otherwise represent that he or she is admitted to practice law in California; (2) Establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; (3) Be a resident of California;	**CAL. RULE OF COURT 967(b)(1)**. See **MR 5.5(c)(4)**: "A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that: * * * (4) are not within paragraphs (c)(2) or (c)(3) [related to litigation matters] and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice." **CAL. RULE OF COURT 967(b)(2)**. *See* **MR 5.5(d)(2)**: "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: * * * (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction. **CAL. RULE OF COURT 967(c)(1)**. *See* **MR 5.5(b)(2)**: "A lawyer who is not admitted to practice in this jurisdiction shall not: * * * (2) hold out to the public or otherwise represent that the lawyer is admitted to	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.

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(4) Be regularly employed in California; (5) Regularly engage in substantial business or professional activities in California; or (6) Have been disbarred, have resigned with charges pending, or be suspended from practicing law in any other jurisdiction. (d) [**Conditions**] By practicing law in California pursuant to this rule, an attorney agrees that he or she is providing legal services in California subject to: (1) The jurisdiction of the State Bar of California; (2) The jurisdiction of the courts of this state to the same extent as is a member of the State Bar of California; and (3) The laws of the State of California relating to the practice of law, the State Bar Rules of Professional Conduct, the rules and regulations of the State Bar of California, and these rules. (e) [**Scope of practice**] An attorney is permitted by this rule to provide legal assistance or legal services concerning only a transaction or other nonlitigation matter. (f) [**Inherent power of Supreme Court**] Nothing in this rule is to be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.	practice law in this jurisdiction." **CAL. RULE OF COURT 967(c)(2)**. *See* **MR 5.5(b)(1)**: "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	

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(g) [**Effect of rule on multijurisdictional practice**] Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not members of the State Bar of California. (h) [**Definitions**] The following definitions apply to terms used in this rule: (1) "A transaction or other nonlitigation matter" includes any legal matter other than litigation, arbitration, mediation, or a legal action before an administrative decision-maker. (2) "Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who meets all of the following criteria: (A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law; (B) Remains an active member in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law under this rule; and (C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.		

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CAL. RULE OF COURT 983. COUNSEL *PRO HAC VICE* (a) [**Eligibility**] A person who is not a member of the State Bar of California but who is a member in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory or insular possession of the United States, and who has been retained to appear in a particular cause pending in a court of this state, may in the discretion of such court be permitted upon written application to appear as counsel pro hac vice, provided that an active member of the State Bar of California is associated as attorney of record. No person is eligible to appear as counsel pro hac vice pursuant to this rule if (1) he is a resident of the State of California, or (2) he is regularly employed in the State of California, or (3) he is regularly engaged in substantial business, professional, or other activities in the State of California. Absent special circumstances, repeated appearances by any person pursuant to this rule shall be a cause for denial of an application. (b) [**Application; notice of hearing**] A person desiring to appear as counsel pro hac vice in a superior, municipal, or justice court		1. Although there is no Model Rule of Professional Conduct counterpart to Cal. Rule of Court 983, in August 2002, the ABA adopted a Model Rule on Pro Hac Vice Admission as part of the proposals of the ABA's MJP Commission. See http://www.abanet.org/cpr/mjp/201f.doc

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shall file with the court a verified application together with proof of service by mail in accordance with section 1013a of the Code of Civil Procedure of a copy of the application and of the notice of hearing of the application upon all parties who have appeared in the cause and upon the State Bar of California at its San Francisco office. The notice of hearing shall be given at the time prescribed in section 1005 of the Code of Civil Procedure unless the court has prescribed a shorter period. An application to appear as counsel pro hac vice in the Supreme Court or a Court of Appeal shall be made as provided in rule 41, with proof of service upon all parties who have appeared in the cause and upon the State Bar of California at its San Francisco office. The application shall state: (1) the applicant's residence and office address; (2) the courts to which the applicant has been admitted to practice and the dates of admission; (3) that the applicant is a member in good standing in those courts; (4) that the applicant is not currently suspended or disbarred in any court; (5) the title of court and cause in which the applicant has filed an application to appear as counsel pro hac vice in this		

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state in the preceding two years, the date of each application, and whether or not it was granted; and (6) the name, address, and telephone number of the active member of the State Bar of California who is attorney of record. (c) [**Fee**] An applicant for permission to appear as counsel pro hac vice pursuant to this rule shall pay a reasonable fee not exceeding $50 to the State Bar of California with the copy of the application and the notice of hearing that is served upon the State Bar. The amount of the fee shall be fixed by the Board of Governors of the State Bar of California (1) to defray the expenses of administering the provisions of this rule which are applicable to the State Bar and the incidental consequences resulting from such provisions, and (2) partially to defray the expenses of administering the board's other responsibilities to enforce the provisions of the State Bar Act relating to the competent delivery of legal services and the incidental consequences resulting therefrom. (d) [**Contempt and other court sanctions; discipline**] A person permitted to appear as counsel pro hac vice pursuant to this rule shall be subject to the jurisdiction of the courts of this state with respect to the law of		

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this state governing the conduct of attorneys to the same extent as a member of the State Bar of California. He shall familiarize himself and comply with the standards of professional conduct required of members of the State Bar of California and shall be subject to the disciplinary jurisdiction of the State Bar with respect to any of his acts occurring in the course of such appearance. Article 5, Chapter 4, Division III of the California Business and Professions Code and the Rules of Procedure of the State Bar shall govern in any investigation or proceeding conducted by the State Bar under this rule. (e) This rule does not preclude the Supreme Court or a Court of Appeal from permitting argument in a particular case from a person who is not a member of the State Bar, but who is licensed to practice in another jurisdiction and who possesses special expertise in the particular field affected by the proceeding.		
CAL. RULE OF COURT 983.1. APPEARANCES BY MILITARY COUNSEL (a) A judge advocate (as that term is defined at 10 United States Code section 801(13)) who is not a member of the State Bar of California but who is a member in good standing of and eligible to practice before the bar of any United States court or of the highest court in any state, territory, or insular possession of the United States may, in the	No corresponding Model Rule or Comment.	

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discretion of a court of this state, be permitted to appear in that court to represent a person in the military service in a particular cause pending before that court, pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940, 50 United States Code Appendix section 501 et seq., if: (1) the judge advocate has been made available by the cognizant Judge Advocate General (as that term is defined at 10 United States Code section 801(1)), or a duly designated representative; and (2) the court finds that retaining civilian counsel likely would cause substantial hardship for the person in military service or that person's family; and (3) the court appoints a judge advocate as attorney to represent the person in military service pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940. Under no circumstances is the determination of availability of a judge advocate to be made by any court within this state, or reviewed by any court of this state. In determining the likelihood of substantial hardship as a result of the retention of civilian counsel, the court may take judicial notice of the prevailing pay scales for persons in the military service. (b) The clerk of the court considering appointment of a judge advocate pursuant to this rule shall provide written notice of that fact to all parties who have appeared in the cause. A copy of the notice, together with		

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proof of service by mail in accordance with section 1013a of the Code of Civil Procedure, shall be filed by the clerk of the court. Any party who has appeared in the matter may file a written objection to the appointment within 10 days of the date on which notice was given unless the court has prescribed a shorter period. If the court determines to hold a hearing in relation to the appointment, notice of the hearing shall be given at least 10 days before the date designated for the hearing unless the court has prescribed a shorter period. (c) A judge advocate permitted to appear pursuant to this rule 983.1 shall be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California. The judge advocate shall become familiar with and comply with the standards of professional conduct required of members of the State Bar of California and shall be subject to the disciplinary jurisdiction of the State Bar of California. Division 3, chapter 4, article 5 of the California Business and Professions Code and the Rules of Procedure of the State Bar of California shall govern any investigation or proceeding conducted by the State Bar under this rule. (d) A judge advocate permitted to appear pursuant to this rule shall be subject to rights and obligations with respect to attorney-client privilege, work-product privilege, and other professional privileges to the same extent as		

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a member of the State Bar of California.		
CAL. RULE OF COURT 983.4. OUT-OF-STATE ATTORNEY ARBITRATION COUNSEL (a) [**Definition**] (1) An "Out-of-State Attorney Arbitration Counsel" is an attorney who is not a member of the State Bar of California but who is a member in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory or insular possession of the United States, and who has been retained to appear in the course of, or in connection with, an arbitration proceeding in this state; and (2) has served a certificate in accordance with the requirements of Code of Civil Procedure section 1282.4 upon the arbitrator, the arbitrators, or the arbitral forum, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney; and (3) whose appearance has been approved by the arbitrator, the arbitrators or the arbitral forum. (b) [**The State Bar Out-of-State Attorney Arbitration Counsel Program**] The State Bar of California shall establish and administer a program to implement the State Bar of California's responsibilities under Code	**CAL. RULE OF COURT 983.4**. *See* **MR 5.5(c)(3)**: "A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that: * * * (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;"	1. Other California statutes and rules of court that address the participation of non-California-licensed attorneys in arbitrations and other ADR activities 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).

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of Civil Procedure section 1282.4. The State Bar of California's program shall be operative only as long as the applicable provisions of Code of Civil Procedure section 1282.4 remain in effect. (c) [**Eligibility to appear as an Out-of-State Attorney Arbitration Counsel**] To be eligible to appear as an Out-of-State Attorney Arbitration Counsel, an attorney must comply with all of the applicable provisions of Code of Civil Procedure section 1282.4 and the requirements of this rule and the rules and regulations adopted by the State Bar of California pursuant to this rule. (d) [**Discipline**] An attorney who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar or California shall be subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of the arbitration. (e) [**Disqualification**] Failure to timely file a certificate or, absent special circumstances, appearances in multiple separate arbitration matters shall be grounds for disqualification from serving in the arbitration in which the certificate was filed. (f) [**Fee**] Out-of-State Attorney Arbitration Counsel shall pay a reasonable fee not exceeding $50 to the State Bar of California with the copy of the certificate that is served upon the State Bar.		

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(g) [**Inherent power of Supreme Court**] Nothing in these rules shall be constructed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.		
CAL. RULE OF COURT 988. REGISTERED FOREIGN LEGAL CONSULTANT (a) [**Definition**] A "Registered Foreign Legal Consultant" is a person who (1) is admitted to practice and is in good standing as an attorney or counselor at law or the equivalent in a foreign country; and (2) has a currently effective Certificate of Registration as a Registered Foreign Legal Consultant from the State Bar. (b) [**State Bar Registered Foreign Legal Consultant program**] The State Bar shall establish and administer a program for registering foreign attorneys or counselors at law or the equivalent under rules adopted by the Board of Governors of the State Bar. (c) [**Eligibility for certification**] To be eligible to become a Registered Foreign Legal Consultant, an applicant must: (1) Present satisfactory proof that the applicant has been admitted to practice and has been in good standing as an attorney or counselor at law or the equivalent in a foreign country for at least		

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four of the six years immediately preceding the application, and while so admitted, has actually practiced the law of that country; (2) Present satisfactory proof that the applicant possesses the good moral character requisite for a person to be licensed as a member of the State Bar of California; (3) Agree to comply with the provisions of the rules adopted by the Board of Governors of the State Bar relating to security for claims against a Foreign Legal Consultant by his or her clients; (4) Agree to comply with the provisions of the rules adopted by the Board of Governors of the State Bar relating to maintaining an address of record for State Bar purposes; (5) Agree to notify the State Bar of any change in his or her status in any jurisdiction where he or she is admitted to practice or of any discipline with respect to such admission; (6) Agree to be subject to the jurisdiction of the courts of this state with respect to the laws of the State of California governing the conduct of attorneys, to the same extent as a member of the State Bar of California; (7) Agree to become familiar with and comply with the standards of professional conduct required of members of the State		

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Bar of California; (8) Agree to be subject to the disciplinary jurisdiction of the State Bar of California; (9) Agree to be subject to the rights and obligations with respect to attorney client privilege, work-product privilege, and other professional privileges, to the same extent as attorneys admitted to practice law in California; and (10) Agree to comply with the laws of the State of California, the Rules and Regulations of the State Bar of California, and these Rules. (d) [**Authority to practice law**] Subject to all applicable rules, regulations, and statutes, a Registered Foreign Legal Consultant may render legal services in California, except that he or she may not: (1) Appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this state or prepare pleadings or any other papers or issue subpoenas in any action or proceeding brought in any court or before any judicial officer; (2) Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States; (3) Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and		

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owned by a resident or any instrument relating to the administration of a decedent's estate in the United States; (4) Prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of a resident; or (5) Otherwise render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States, or of any jurisdiction other than the jurisdiction(s) named in satisfying the requirements of subdivision (c) of this rule, whether rendered incident to preparation of legal instruments or otherwise. (e) [**Failure to comply with program**] A Registered Foreign Legal Consultant who fails to comply with the requirements of the Registered Foreign Legal Consultant program of the State Bar shall have her or his certification suspended or revoked under rules adopted by the Board of Governors of the State Bar. (f) [**Fee and penalty**] The State Bar shall have the authority to set and collect appropriate fees and penalties for this program. (g) [**Inherent power of Supreme Court**] Nothing in these rules shall be construed as affecting the power of the Supreme Court to		

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exercise its inherent jurisdiction over the practice of law in California.		

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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(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). (CONTINUED)	**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(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."	**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 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."	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 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 **CAL.RULE 3-200** provide a lawyer may make a good faith argument for an extension, modification, or reversal of such existing law.
CAL. B&P CODE §6068(D). DUTIES OF	**MR 3.3: Candor Toward The Tribunal**	

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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.	"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. B&P CODE § 6068(D), provides it is the duty of a lawyer "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." This is the closest statute or rule to MR 8.4(e), but it and **CAL. RULE 5-200** (see below) 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.	**MR 8.4(d)** It is misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice;" **MR 8.4(e)** It is misconduct for a lawyer to "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." **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." **MR 3.4: Fairness To Opposing Party And**	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.

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	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;" **MR 4.1(a)** "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." **MR 4.1(b)** In the course of representing a client a lawyer shall not knowingly: (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."	
CAL. B&P CODE § 6068(D) (CONTINUED)	**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,	1. In the organizational context, see also rule 3-600(D) concerning the lawyer's obligations to the client organization's constituents. 2. 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.

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	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."	
CAL. B&P CODE § 6068(E) No corresponding California rule or discussion that tracks the language of MR 1.9(c), *but see* **CAL. B&P CODE § 6068(e)(1)**.	**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) "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."	**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)."	1. **CAL. 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). 2. **B&P CODE § 6068(E)** was given an operative date of 7/1/2004 to permit the State Bar to develop the corresponding Rule 3-100. 3. **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.

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CAL. B&P CODE § 6068(E)(2) "(e)(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."	**MR 1.6(b)(1)** "(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."	1. See **CAL. RULE 3-100**, page 57, *above*.
CAL. B&P CODE § 6068(E) 1. *See* Notes & Comments.	**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 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	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, may be found in **CAL. RULE 3-100, cmt. 2** 3. There are no California statutes, rules or discussion corresponding to Comment 4.

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	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. 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." 7. 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. 8. Cmt. 10 explains MR 1.6(b)(4). 9. 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 is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law." 10. Cmt. 12 notes that "[p]aragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure	4. There are no California statutes, rules or discussion corresponding to Comment 4. 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." 6. No corresponding California discussion. 7. No corresponding California discussion. 8. No corresponding California discussion. 9. No corresponding California discussion. 10. See **CAL. RULE 3-100(D)** & **CAL. RULE 3-100, cmt. 8** concerning the *extent* of disclosure. Concerning whether a lawyer

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	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."	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**.
	11. Cmt. 13 notes that paragraph (b) is permissive; disclosure is not mandated.	11. **CAL. RULE 3-100(B)** provides in part that "a member may, but is not required to …"
	12. Cmt. 14 states 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."	12. No corresponding California discussion.
	13. Cmt. 15 requires the lawyer to act competently to safeguard confidential information.	13. No corresponding California discussion.
	14. Cmt. 16 provides that "[w]hen transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients."	14. No corresponding California discussion.
	15. Cmt. 17 notes the duty of confidentiality continues after the representation is terminated. *See also* MR 1.18, duties to prospective clients.	15. No corresponding California discussion.

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CAL. B&P CODE § 6068(F), 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: 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."	
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: 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(M) "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: 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 about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any	1. See also **CAL. RULE 3-500**. 2. Per **CAL. RULE 3-500**, **DISCUSSION** a lawyer will not be disciplined for failing to communicated insignificant or irrelevant information. 3. *See also* **CAL. RULE 3-510** (Communication of Settlement Offer)

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	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."	
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 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(b)** It is misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;"	

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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(c)** engage in conduct involving dishonesty, fraud, deceit or misrepresentation;	
CAL. B&P CODE 6126(A). UNAUTHORIZED PRACTICE OR ADVERTISING AS A MISDEMEANOR (a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars ($1,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a sentence of less than 90 days for a second or subsequent conviction under this subdivision, the court shall state the reasons	**MR 5.5(b)(2)** A lawyer who is not admitted to practice in this jurisdiction shall not: * * * (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction."	

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for its sentencing choice on the record.		
CAL. B&P CODE § 6128(A). 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 intent to deceive the court or any party."	**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." **MR 4.1(a)** "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." **MR 4.1(b)** In the course of representing a client a lawyer shall not knowingly: (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."	
CAL. B&P CODE §6128(B). 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.	**MR 1.3: Diligence** "A lawyer shall act with reasonable diligence and promptness in representing a client."	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

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CAL. B&P CODE § 6128(B). (CONTINUED)	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.	
CAL. B&P CODE § 6128(B) (CONTINUED)	**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."	1. In the organizational context, see also rule 3-600(D) concerning the lawyer's obligations to the client organization's constituents. 2. 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.
CAL. B&P CODE § 6147 1. Concerning contingent fee agreements, see **B&P CODE § 6147**	**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;	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.

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	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 stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination."	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.
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) (?)	**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."	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).
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	**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 legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service	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

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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 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."	that has been approved by an appropriate regulatory authority; and (3) pay for a law practice in accordance with Rule 1.17; and (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.	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.
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	**MR 5.7: Responsibilities Regarding Law Related Services** (a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the	

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Financial Services By Lawyers”).	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. EVIDENCE CODE § 956.5, 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 the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm.”	**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; (2) to secure legal advice about the lawyer's compliance with these Rules; (3) 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 (4) to comply with other law or a court order.”	1. The State Bar on three occasions requested that the Supreme Court adopt **Cal. Rule 3-100 (Proposed)**, which would have created a bodily harm exception to the duty, but the court rejected the request each time. 2. Consider also **AB 1101**, before the legislature in 2003, which would amend B&P Code § 6068(e) to allow a lawyer to disclose confidential client information to prevent a crime reasonably likely to result in death or serious bodily injury. 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.”

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CAL. PROBATE CODE § 21350 ("Instrument Making Donative Transfer to Draftor of Instrument Is Invalid") and sections following. **CAL. B&P CODE § 6103.6**, violation of Probate Code § 21350 et seq. is a ground for discipline.	**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 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."	1. *See also* **CAL. RULE 4-400**. Gifts From Client, which provides "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."

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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(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."	
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 campaigns. These rules shall be referred to as the Code of Judicial Ethics."	**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."	1. The California Supreme Court adopted the California Code of Judicial Ethics on 1/15/96.

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