

California's New Rules

Presented by:

Neil J Wertlieb

WERTLIEB LAW



October 30, 2018

Presented to:

LOWELL MILKEN INSTITUTE
FOR BUSINESS LAW AND POLICY



UCLA | SCHOOL OF LAW



THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT

- **Failure to comply may result in discipline**
- **Comprehensive set of new & amended Rules**
 - **Approved by California Supreme Court**
 - **69 new Rules to replace our current 46 Rules**
 - **Adopts organization & numbering of ABA Model Rules**
 - **Effective November 1, 2018**

Selected New Rules



- I. Major Controversial Changes**
- II. Important Changes You Should Know**
- III. Entirely New Rules**

I. Major Controversial Changes

**A. New Rule 1.8.10:
Sexual Relations with Client**



I. Major Controversial Changes
A. Sexual Relations with Client

Current Rule 3-120: An attorney shall not

- demand sexual relations as a condition of professional representation; or
- employ coercion, intimidation or undue influence in entering into sexual relations with a client; or
- continue representation if sexual relations cause attorney to perform legal services incompetently

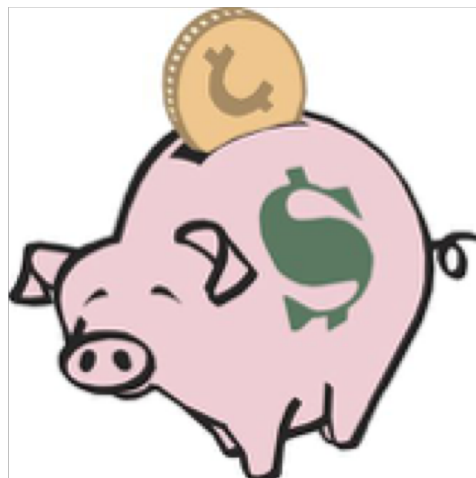
I. Major Controversial Changes
A. Sexual Relations with Client

New Rule 1.8.10

- (a) A lawyer shall not engage in sexual relations with a current client
- who is not the lawyer's spouse or registered domestic partner,
 - unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced

I. Major Controversial Changes

**B. New Rule 1.15:
Safekeeping Funds & Property
of Clients & Other Persons**



I. Major Controversial Changes

B. Safekeeping Funds & Property of Clients & Other Persons

New Rule 1.15

(a) All funds received *or held* by a lawyer or law firm for the benefit of a client, ... including advances for **fees**, costs and expenses, shall be deposited in [a] “Trust Account” ...

- *maintained in the State of California*

I. Major Controversial Changes

**C. New Rule 8.4.1:
Prohibited Discrimination,
Harassment and Retaliation**



I. Major Controversial Changes

C. Prohibited Discrimination, Harassment and Retaliation

New Rule 8.4.1

~~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 . . . shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred~~

II. Important Changes You Should Know



A. New Rule 1.2.1: Advising or Assisting the Violation of Law

Comment [6]: Rule permits a lawyer to advise a client regarding the validity, scope and meaning of California laws that might conflict with federal law

- Lawyer may assist in drafting, administering, interpreting or complying with California laws
- Lawyer must inform client about federal law

II. *Important Changes You Should Know*



B. New Rule 1.7: Conflict of Interest: Current Clients

Replaces “checklist” approach of *Rule 3-310* with:

- (a) Conflict: direct adversity to a current client
- (b) Conflict: significant risk representation materially limited by
 - responsibilities/relationships to other client or 3rd person,
 - or by lawyer’s own interests

Corporation

Limited Liability Company

Business Trust

PARTNERSHIP

Non-Profit

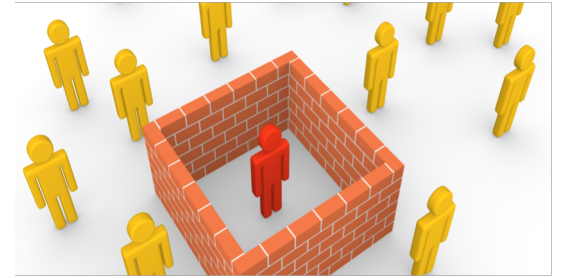
II. Important Changes You Should Know

C. New Rule 1.13: Organization as Client

(b) Mandates “reporting up”

- if lawyer knows constituent intends to act
- in a manner lawyer knows or should know is
 - in violation of legal duty or law reasonably imputable to the organization, **and**
 - likely to result in substantial injury to the organization

(e) Notice required if discharged or withdrawal



III. Entirely New Rules

A. New Rule 1.10: Imputation of Conflicts of Interest: General Rule

- Lawyers in a firm shall not knowingly represent a client when any one of them practicing alone would be prohibited from doing so
- *Statutory* acknowledgment that ethical screens may be effective to cure what would otherwise be an imputed conflict

III. Entirely New Rules



B. New Rule 1.18: Duties to Prospective Client

- (b) Lawyer shall not reveal confidential information of prospective client
- (c) Prohibits lawyer from representation materially adverse to prospective client
 - in same or substantially related matter
 - if the lawyer received confidential information

III. Entirely New Rules



C. New Rule 4.1: Truthfulness in Statements to Others

Lawyer shall not knowingly:

- (a) make false statement of material fact or law to a 3rd person; or
- (b) fail to disclose material fact to a 3rd person when disclosure is necessary to avoid assisting criminal or fraudulent act by client

III. Entirely New Rules



D. New Rule 4.3: Dealing with an Unrepresented Person

Lawyer shall not:

- state or imply lawyer is disinterested
- fail to correct misunderstanding that lawyer is disinterested
- give legal advice when interests are in conflict
- seek to obtain privileged or confidential info

III. Entirely New Rules



E. New Rule 4.4: Inadvertently Transmitted Writings

Where reasonably apparent that a writing was inadvertently sent, and lawyer knows that writing is privileged, lawyer shall:

- (a) refrain from examining writing any more than necessary to determine privilege, and
- (b) promptly notify sender

III. Entirely New Rules



F. New Rules 5.1, 5.2 & 5.3:

Managerial & Supervisory Lawyers

- shall make reasonable efforts to ensure firm has in effect measures giving reasonable assurance that all lawyers in firm comply with Rules

Subordinate Lawyer

- shall comply with Rules notwithstanding that lawyer acts at direction of another lawyer

Nonlawyer Assistants

- supervising lawyer shall make reasonable efforts to ensure nonlawyer's conduct is compatible with Rules

Questions?

