



# The State Bar of California

## **Rule 1.4.1 Communication of Settlement Offers (Rule Approved by the Supreme Court, Effective November 1, 2018)**

- (a) A lawyer shall promptly communicate to the lawyer's client:
  - (1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and
  - (2) all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.
  
- (b) As used in this rule, "client" includes a person\* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.

### **Comment**

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

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

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 3-510 (Communication of Settlement Offer) in accordance with the Commission Charter. The ABA Model Rules have no black letter rule on a lawyer’s duty to communicate settlement offers, relegating rule 3-510’s concept to a comment in Model Rule 1.4. Therefore, the Commission considered approaches taken in other jurisdictions with regard to communication of settlement offers. The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The result of this evaluation is proposed rule 1.4.1 (Communication of Settlement Offers).

**Rule As Issued For 90-day Public Comment**

Proposed rule 1.4.1 carries forward the substance of current rule 3-510 but has been renumbered to correspond to the ABA Model Rules. The renumbering will help lawyers from other jurisdictions authorized to practice law in California to more easily find corresponding California rules to aid in their determination of whether California imposes different duties. Moreover, it will help California lawyers research case law and ethics opinions that address corresponding rules in other jurisdictions. This will assist California lawyers in complying with their duties, particularly when California does not have such authority interpreting the California rule.

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

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

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

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

**Post-Public Comment Revisions**

After consideration of comments received in response to the initial 90-day public comment period, the Commission made no changes to proposed rule 1.4.1 and voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 1.4.1 at its November 17, 2016 meeting.

**Supreme Court Action (May 10, 2018)**

The Supreme Court approved the rule as submitted by the State Bar to be effective November 1, 2018.

**Rule 1.4.1 ~~3-510~~ Communication of Settlement ~~Offer~~Offers**  
(Redline Comparison to the California Rule Operative Until October 31, 2018)

- (Aa) A ~~member~~lawyer shall promptly communicate to the ~~member's~~lawyer's client:
- (1) ~~All~~all terms and conditions of ~~anya~~proposed plea bargain or other dispositive offer made to the client in a criminal matter; and
  - (2) ~~All~~all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.
- (Bb) As used in this rule, "client" includes a person\* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.

**Comment~~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~~An oral ~~offers~~offer of settlement made to the client in a civil matter ~~should~~must also be communicated if ~~they are~~it is a "significant" ~~for the purposes of~~ development under rule ~~3-500.1.4.~~