

**STATE BAR OF CALIFORNIA  
COMMISSION FOR THE REVISION OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA**

**OPEN SESSION ACTION SUMMARY**

**Friday, November 13, 2015 (10:00 am – 4:30 pm)  
Saturday, November 14, 2015 (9:00 am – 4:30 pm)**

**State Bar of California  
845 So. Figueroa Street  
Room 2C-E, 2nd Floor  
Los Angeles, CA 90017**

**Members Present:** Hon. Lee Edmon (Chair), Jeffrey Bleich (Co-Vice-Chair), Dean Zipser (Co- Vice-Chair); George Cardona, Danny Chou, Hon. Karen Clopton, Joan Croker, Nanci Clinch, Daniel Eaton, James Ham, Lee Harris, Robert Kehr, Howard Kornberg, Carol Langford, Raul Martinez, Toby Rothschild, Hon. Dean Stout and Mark Tuft.

**Members Absent:** Mayor Aja Brown

**Advisors Present:** Wendy Chang, Hon. Richard Fybel, Edith Matthai and Heather Rosing.

**Liaisons Present:** Greg Fortescue (California Supreme Court), Miriam Krinsky (Board of Trustees) and Jason Lee (Board of Trustees).

**State Bar Staff Present:** Allen Blumenthal (Office of Chief Trial Counsel), Randall Difuntorum (Office of Professional Competence), Gordon Grenier (State Bar Court), Mimi Lee (Office of Professional Competence), Erika Leighton (Office of General Counsel), Kevin Mohr (Consultant/Reporter), and Andrew Tuft (Office of Professional Competence).

**Others Present:** Diane Karpman, Stan Lamport, Teresa Schmid, Camille Townsend and Neil Wertlieb.

**I. CHAIR'S REMARKS**

The Chair requested and Mr. Difuntorum gave an oral report on the Board of Trustee's upcoming meetings that will include: (1) a progress report on the Commission's work to be presented by the Commission's chair to the full Board on November 20, 2015; and (2) the Commission's request for public comment authorization on the Commission's proposed amended rules 5-110 and 5-220 (re Model Rule 3.8) to be considered at the Board Committee's meeting on November 19, 2015 and the full Board on November 20, 2015.

The Chair requested and Mr. Fortescue provided a reminder that the Commission's work should be consistent with the September 19, 2014 Supreme Court letter stating, in part, that: (1) the starting point for considering a proposed rule is the current California rule; (2) changes should focus on the historical role of the rules as minimum disciplinary standards; (3) aspirational standards are not appropriate for the rules; and (4) official rule comments should be used sparingly, similar to use of commentary in the California Code of Judicial Ethics. In addition, it was emphasized that the Commission's approach should not be to "follow the ABA

Model Rules unless there is a good reason not to do so,” as that would not necessarily lead to rule amendments consistent with the guidance provided by the Supreme Court.

The Chair welcomed recently appointed Commission participants to their first meeting: (1) Commission member Joan Croker; (2) Board of Trustee’s liaison Jason Lee; and (3) Commission Advisor Heather Rosing.

## **II. CONSENT AGENDA – APPROVAL OF ACTION SUMMARY**

### **a. Approval of Action Summary - Regular Meeting on October 23, 2015 (Open Session).**

The consent agenda was presented to the Commission and upon motion made, seconded and adopted, it was

RESOLVED, that the Commission approves the action summary of the Commission’s October 23, 2015 meeting.

All members present voted yes with the exception of Mr. Kehr who abstained.

## **III. ACTION**

### **a. Report and Recommendation on Rule 2-400 (Prohibited Discriminatory Conduct in a Law Practice).**

The Chair welcomed Camille Townsend who appeared on behalf of the Commission on Access and Fairness and led a discussion of bias and discrimination in the legal profession, including an explanation of implicit bias and the need for training.

Following discussion, the Rule 1-120 drafting team (that is also assigned to consider all of Model Rule 8.4) and the Rule 2-400 drafting team were assigned to combine their efforts in considering the original concept of an anti-bias rule that was developed by the 1986 Rules Revision Commission and the subsequent State Bar Anti-Bias Rule Committee. Mr. Cardona was asked to lead the joint effort that would include consideration of a possible replacement for the former statutory prohibition against “offensive personality” (the former version of Business and Professions Code section 6068, subdivision (f)).

To guide the joint effort, a consensus vote was taken on the question of whether current paragraph (C) of Rule 2-400 should be retained in a proposed amended rule. The Commission voted 13 yes, 3 no, and 1 abstain to eliminate current paragraph (C). It was understood that this consensus vote would not preclude consideration of a different version of that paragraph and Mr. Eaton asked that the record indicate that his no vote did not reflect his belief that the paragraph should be retained as is, but rather reflected his view that a different version of paragraph (C) ought to be included in a proposed amended rule.

### **b. Report and Recommendation on Rule 1-650 (Limited Legal Services Programs) (including ABA Model Rules 6.1 (Voluntary Pro Bono Publico Service), 6.2 (Accepting Appointments), 6.3 (Membership in Legal Services Organization), and 6.4 (Law Reform Activities Affecting Client Interests)).**

The Chair noted that proposed amended Rule 1-650 [6.5] was considered and adopted at the October 23, 2015 meeting and that the Commission’s current discussion would be the consideration of related ABA Model Rules for which there are no direct California counterparts.

*Consideration of Rule 6.2:*

The Chair recognized Mr. Martinez who presented the report and recommendation of the drafting team concerning proposed Rule 6.2. Mr. Martinez explained that the drafting team chose to present a proposed new Rule 6.2 as an open issue for the Commission's consideration because there was no strong consensus in favor of adopting the proposed rule.

A motion was made and seconded to adopt proposed Rule 6.2 and the motion failed by a vote of 0 yes, 16 no, and 1 abstain.

*Consideration of Rule 6.3:*

The Chair recognized Mr. Harris who presented the report and recommendation of the drafting team concerning proposed Rule 6.3. Following discussion the proposed rule submitted by the drafting team was amended.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-650 drafting team, the Commission hereby adopts the proposed new Rule 6.3 of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes.

*Consideration of Rule 6.4:*

The Chair recognized Mr. Martinez who presented the report and recommendation of the drafting team concerning proposed Rule 6.4.

A motion was made and seconded to adopt proposed new Rule 6.4 and the motion failed by a vote of 0 yes, 14 no, and 0 abstain.

*Consideration of Rule 6.1:*

In recognition of meeting time spent on the foregoing rules, there was no objection to postponing to the January 2016 meeting the consideration of the drafting team's recommendation on proposed Rule 6.1.

**c. Report and Recommendation on Rule 1-700 (Member as Candidate for Judicial Office) (including ABA Model Rule 8.2 (Judicial and Legal Officials)).**

The Chair recognized Judge Stout who presented the report and recommendation of the drafting team. Following discussion the proposed rule submitted by the drafting team was amended.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-700 drafting team, the Commission hereby adopts the black letter text of proposed amended Rule 1-700 [8.2] of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-700 drafting team, the Commission hereby adopts the Comments to proposed amended Rule 1-700 [8.2] of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes with the exception of Mr. Ham and Mr. Martinez who voted no.

**d. Report and Recommendation on Rule 1-710 (Member as Temporary Judge, Referee, or Court-Appointed Arbitrator) (including ABA Model Rule 2.4 (Lawyer Serving as Third-Party Neutral) and Proposed New Rule 2.4.1 (Member as Temporary Judge, Referee, or Court-Appointed Arbitrator)).**

The Chair recognized Judge Clopton who presented the report and recommendation of the drafting team. Judge Clopton explained that the team recommended a proposed amended Rule 1-710 [2.4.1] and a proposed new Rule 2.4, derived from ABA Model Rule 2.4 that does not have a direct California counterpart.

*Consideration of Rule 1-710 [2.4.1]:*

Following discussion the proposed rule submitted by the drafting team was amended.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-710 drafting team, the Commission hereby adopts proposed amended Rule 1-710 [2.4.1] of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes.

*Consideration of Rule 2.4:*

Following discussion the proposed rule submitted by the drafting team was amended.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-710 drafting team, the Commission hereby adopts proposed new Rule 2.4 of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes.

**e. Report and Recommendation on Rule 3-110 (Failing to Act Competently) (including ABA Model Rules 1.1 (Competence), 1.3 (Diligence), and 5.1 (Responsibilities of a Partner or Supervisory Lawyer))**

The Chair noted that the remaining aspects of the drafting team's previously considered report and recommendation were: (1) consideration of diligence as a separate rule from competence

(Rule 3-110 [1.1]) and any conforming changes to the competence rule; and (2) the comments to proposed new rule 5.1.

*Consideration of Diligence as a Separate Rule from Competence:*

The Chair recognized Mr. Tuft who presented the report and recommendation of the drafting team for a proposed new Rule 1.3 on diligence. Following discussion the proposed rule submitted by the drafting team was amended.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 3-110 drafting team, the Commission hereby adopts proposed new Rule 1.3 of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes with the exception of Mr. Ham, Mr. Harris, Mr. Kehr, Mr. Kornberg, and Mr. Martinez who vote no.

*Consideration of Conforming Amendments to the Competence Rule (3-110 [1.1]):*

In accordance with the foregoing adoption of a separate rule on diligence, the Commission considered conforming amendments to previously adopted Rule 3-110 [1.1].

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 3-110 drafting team, the Commission hereby adopts proposed amended Rule 3-110 [1.1] of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes.

*Consideration of the Proposed Comments to Rule 5.1:*

The Chair recognized Mr. Kehr who presented the report and recommendation of the drafting team for proposed Comments to the previously adopted black letter text of proposed new Rule 5.1. Following discussion the proposed rule submitted by the drafting team was amended.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 3-110 drafting team, the Commission hereby adopts the proposed Comments to proposed new Rule 5.1 of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes with the exception of Ms. Langford who abstained.

**f. Report and Recommendation on Rule 4-210 (Payment of Personal or Business Expenses Incurred by and for a Client).**

The Chair recognized Mr. Rothschild who presented the report and recommendation of the drafting team. Following discussion the proposed rule submitted by the drafting team was amended.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 4-210 drafting team, the Commission hereby adopts proposed amended Rule 4-210 [1.8.5] of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes with the exception of Mr. Chou, Mr. Ham, Mr. Kehr, and Mr. Martinez who voted no.

**g. Report and Recommendation on Rule 4-300 (Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review).**

The Chair recognized Ms. Langford who presented the report and recommendation of the drafting team.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 4-300 drafting team, the Commission hereby adopts proposed amended Rule 4-300 [1.8.9] of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes with the exception of Mr. Kehr who voted no.

**h. Report and Recommendation on Rule 4-400 (Gifts from Client).**

The Chair recognized Mr. Ham who presented the report and recommendation of the drafting team. Following discussion the proposed rule submitted by the drafting team was amended.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 4-400 drafting team, the Commission hereby adopts proposed amended Rule 4-300 [1.8.3] of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes with the exception of Mr. Martinez who abstained.

**i. Report and Recommendation on Rule 1-310 (Forming a Partnership With a Non-Lawyer); Rule 1-320 (Financial Arrangements with Non-Lawyers); and Rule 1-600 (Limited Legal Service Programs) (including ABA Model Rule 5.4 (Professional Independence of a Lawyer)).**

The Chair recognized Mr. Harris who presented the report and recommendation of the drafting team. Mr. Harris explained that the team was assigned to consolidate the consideration of current Rules 1-310, 1-320 and 1-600 with ABA Model Rule 5.4. Following discussion the proposed rule submitted by the drafting team was amended.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-310 drafting team, the Commission hereby adopts proposed amended Rule 1-310 [5.4] of the

Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes.

**CLOSED SESSION**

*None\**

\*Closed under Bus. & Prof. Code § 6026.5(a) to consult with counsel concerning pending or prospective litigation.

\*Closed under Bus. & Prof. Code Sec. 6026.5(d) to consider a personnel matter.

**PROPOSED RULES 1-310, 1-320, 1-600 [5.4] OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA**  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING

**Rules 1-310, 1-320, 1-600 [5.4] Financial and Similar Arrangements with  
Nonlawyers**

- (a) A lawyer or law firm shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
  - (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money or other consideration 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 purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to Rule 1.17 [2-300], to the lawyer's estate or other representative;
  - (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, provided the plan does not otherwise violate these Rules or the State Bar Act;
  - (4) a lawyer or law firm may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or
  - (5) a lawyer or law firm may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm in the matter.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consist of the practice of law.
- (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 independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:
  - (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable time during administration;



- (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
  - (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees 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 lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person or organization to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person, organization or group to practice law in violation of these Rules or the State Bar Act.

### **Comment**

[1] Paragraph (a) does not prohibit a lawyer or law firm from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm and does not violate these Rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third party for goods and services provided to a lawyer or law firm; however, the compensation to a nonlawyer third party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third party collects on the lawyer's behalf.

[3] Paragraph (a)(5) permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See also Rule 6.3. Regarding a lawyer's contribution of legal fees to a legal services organization, see [Rule 6.1, Comment [4]].

[4] This Rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].

**PROPOSED RULE 3-110 [1.1] OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA**  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING

**Rule 3-110 [1.1] Competence**

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this Rule, “competence” in any legal service shall mean to apply the 1) learning and skill, and 2) mental, emotional, and physical ability reasonably necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by 1) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes to be competent, 2) acquiring sufficient learning and skill before performance is required, or 3) referring the matter to another lawyer whom the lawyer reasonably believes to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably necessary in the circumstances.

**Comment**

[1] This Rule addresses only a lawyer's responsibility for his or her own professional competence. See Rules 5.1 and 5.3 with respect to a lawyer's disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

[2] See Rule 1.3 with respect to a lawyer's duty to act with reasonable diligence.

**PROPOSED RULE 1.3 OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA**  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING

**Rule 1.3 Diligence**

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to act with reasonable diligence in representing a client.
- (b) For purposes of this Rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or without just cause, unduly delay a legal matter entrusted to the lawyer.

**Comment**

[1] This Rule addresses only a lawyer’s responsibility for his or her own professional diligence. See Rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

[2] See Rule 1.1 with respect to a lawyer’s duty to perform legal services with competence.

**PROPOSED RULE 4-400 [1.8.3] OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA**  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING

**Rule 4-400 [1.8.3] Gifts From Client**

- (a) A lawyer shall not:
- (1) solicit a client to make a substantial gift, including a testamentary gift, to the lawyer or a person related to the lawyer, or
  - (2) prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless (i) the lawyer or other recipient of the gift is related to the client or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.
- (b) For purposes of this Rule, related persons include a person who is “related by blood or affinity” as that term is defined in California Probate Code section 21374(a).

**Comment**

[1] A lawyer or a person related to a lawyer may accept a gift from the lawyer’s client, subject to general standards of fairness and absence of undue influence. A lawyer also does not violate this Rule merely by engaging in conduct that might result in a client making a gift, such as by sending the client a wedding announcement. Discipline is appropriate where impermissible influence occurs. See *Magee v. State Bar* (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839].

[2] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client’s estate or to another potentially lucrative fiduciary position. Such appointments, however, will be subject to [Rule 1.7(a)(2)].

**PROPOSED RULE 4-210 [1.8.5] OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA**  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING

**Rule 4-210 [1.8.5] Payment of Personal or Business Expenses Incurred by or for a Client**

- (a) A lawyer shall not directly or indirectly pay or agree to pay, guarantee, or represent that the lawyer or lawyer's law firm will pay the personal or business expenses of a prospective or existing client.
- (b) Notwithstanding paragraph (a), a lawyer may:
  - (1) pay or agree to pay such expenses to third persons, from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
  - (2) after the lawyer is retained by the client, agree to lend money to the client based on the client's written promise to repay the loan, provided the lawyer complies with [Rules 1.7(a)(2) and 1.8.1] before making the loan or agreeing to do so;
  - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter;
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent or pro bono client in a matter in which the lawyer represents the client; and
- (c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable expenses of litigation, including court costs, and reasonable expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this Rule shall be deemed to limit the application of Rule 1.8.9 [4-300].

**PROPOSED RULE 4-300 [1.8.9] OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING**

**Rule 4-300 [1.8.9] Purchasing Property at a Foreclosure or a Sale Subject to  
Judicial Review**

- (a) A lawyer shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyer or any lawyer affiliated by reason of personal, business, or professional relationship with that lawyer or with that lawyer's law firm is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.
  
- (b) A lawyer 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 lawyer or of another lawyer in the lawyer's law firm or is an employee of the lawyer or the lawyer's law firm.

**PROPOSED RULE 2.4 OF THE RULES OF PROFESSIONAL CONDUCT OF THE  
STATE BAR OF CALIFORNIA**

ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING

**Rule 2.4 Lawyer as Third-Party Neutral**

- (a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

**Comment**

[1] In serving as a third-party neutral, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer neutrals may also be subject to various codes of ethics, such as the Judicial Council Standards for Mediators in Court Connected Mediation Programs or the Judicial Council Ethics Standards for Neutral Arbitrators in Contractual Arbitration.

[2] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in [Rule 1.12].

[3] This Rule is not intended to apply to temporary judges, referees or court-appointed arbitrators. See Rule 2.4.1.

**PROPOSED RULE 1-710 [2.4.1] OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA**  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING

**Rule 1-710 [2.4.1] Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator**

A lawyer who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject to Canon 6D of the Code of Judicial Ethics, shall comply with the terms of that canon.

**Comment**

[1] This Rule is intended to permit the State Bar to discipline lawyers who violate applicable portions of the Code of Judicial Ethics while acting in a judicial capacity pursuant to an order or appointment by a court.

[2] This Rule is not intended to apply to a lawyer serving as a third-party neutral in a mediation or a settlement conference, or as a neutral arbitrator pursuant to an arbitration agreement. See Rule 2.4.



**PROPOSED RULE 5.1 OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA**  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING

**Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers**

- (a) A lawyer who individually or together with other lawyers possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm comply with these Rules and the State Bar Act.
- (b) A lawyer having direct supervisory authority over another lawyer, whether or not a member or employee of the same law firm, shall make reasonable efforts to ensure that the other lawyer complies with these Rules and the State Bar Act.
- (c) A lawyer shall be responsible for another lawyer's violation of these Rules and the State Bar Act if: (1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or (2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, whether or not a member or employee of the same law firm, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**Comment**

*Paragraph (a) – Duties Of Managerial Lawyers To Reasonably Assure Compliance with the Rules.*

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed, for example, to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

[2] Whether particular measures or efforts satisfy the requirements of paragraph (a) might depend upon the law firm's structure and the nature of its practice, including the size of the law firm, whether it has more than one office location or practices in more than one jurisdiction, or whether the firm or its partners engage in any ancillary business.

[3] A partner, shareholder or other lawyer in a law firm who has intermediate managerial responsibilities might not be required to implement particular measures under paragraph (a) if the law firm has a designated managing lawyer charged with that responsibility, or a management committee or other body that has appropriate managerial authority and is charged with that responsibility. However, a lawyer remains responsible to take corrective steps if the lawyer knows or reasonably should know that the delegated body or person is not providing or implementing measures as required by this Rule.

[4] Paragraph (a) also requires managerial lawyers to make reasonable efforts to assure that other lawyers in an agency or department comply with these Rules and the State Bar Act. This Rule contemplates, for example, the creation and implementation of reasonable guidelines relating to the assignment of cases and the distribution of workload among lawyers in a public sector legal agency or other legal department. See, e.g., State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006).

*Paragraph (b) – Duties of Supervisory Lawyers*

[5] Whether a lawyer has direct supervisory authority over another lawyer in particular circumstances is a question of fact.

*Paragraph (c) – Responsibility for Another’s Lawyer’s Violation*

[6] The appropriateness of remedial action under paragraph (c)(2) would depend on the nature and seriousness of the misconduct and the nature and immediacy of its harm. A managerial or supervisory lawyer must intervene to prevent avoidable consequences of misconduct if the lawyer knows that the misconduct occurred.

[7] A supervisory lawyer violates paragraph (b) by failing to make the efforts required under that paragraph, even if the lawyer does not violate paragraph (c) by knowingly directing or ratifying the conduct, or where feasible, failing to take reasonable remedial action.

[8] Paragraphs (a), (b) and (c) create independent bases for discipline. This Rule does not impose vicarious responsibility on a lawyer for the acts of another lawyer who is in or outside the law firm. Apart from paragraph (c) of this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate, or subordinate lawyer. The question of whether a lawyer can be liable civilly or criminally for another lawyer’s conduct is beyond the scope of these Rules.

[9] This Rule does not alter the personal duty of each lawyer in a law firm to comply with these Rules and the State Bar Act. See Rule 5.2(a).

**PROPOSED RULE 6.3 OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA**  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING

**Rule 6.3 Membership In Legal Services Organization**

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under [Rules 1.7, 1.9, or 1.18], or Business and Professions Code section 6068(e)(1); 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.

**Comment**

Lawyers should support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

**PROPOSED RULE 8.2 OF THE RULES OF  
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA  
ADOPTED BY THE COMMISSION AT THE NOVEMBER 13TH – 14TH MEETING**

**Rule 1-700 [8.2] Judicial Officials**

- (a) A lawyer shall not make a statement of fact 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 or judicial officer, or of a candidate for election or appointment to judicial office.
- (b) A lawyer who is a candidate for judicial office in California shall comply with Canon 5 of the California Code of Judicial Ethics. For purposes of this Rule, “candidate for judicial office” means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer’s duty to comply with this Rule shall end when the lawyer announces withdrawal of the lawyer’s candidacy or when the results of the election are final, whichever occurs first.
- (c) A lawyer who seeks appointment to judicial office shall comply with Canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer’s duty to comply with this Rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer’s application.

**Comment**

[1] To maintain the fair and independent administration of justice, lawyers should defend judges and courts unjustly criticized. Lawyers also are obligated to maintain the respect due to the courts of justice and judicial officers. See Business and Professions Code section 6068(b).

[2] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.