



The State Bar of California

Rule 8.1 False Statement Regarding Application for Admission to Practice Law (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) An applicant for admission to practice law shall not, in connection with that person's* own application for admission, make a statement of material fact that the lawyer knows* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A lawyer shall not, in connection with another person's* application for admission to practice law, make a statement of material fact that the lawyer knows* to be false.
- (c) An applicant for admission to practice law, or a lawyer in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known* by the applicant or the lawyer to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to membership in the State Bar; reinstatement to active membership in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

Comment

[1] A person* who makes a false statement in connection with that person's* own application for admission to practice law may be subject to discipline under this rule after that person* has been admitted. (See, e.g., *In re Gossage* (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130].)

[2] A lawyer's duties with respect to a *pro hac vice* application or other application to a court for admission to practice law are governed by rule 3.3.

[3] A lawyer representing an applicant for admission to practice law is governed by the rules applicable to the lawyer-client relationship, including Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6. A lawyer representing a lawyer who is the subject of a disciplinary proceeding is not governed by this rule but is subject to the requirements of rule 3.3.

**NEW RULE OF PROFESSIONAL CONDUCT 8.1
(Former Rule 1-200)
False Statement Regarding Application for Admission,
Readmission, Certification or Registration**

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 1-200 (False Statement Regarding Admission to the State Bar) and in accordance with the Commission Charter. In addition, the Commission considered the national standard of ABA Model Rule 8.1 (Bar Admission and Disciplinary Matters). The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The result of the Commission’s evaluation is proposed rule 8.1 (False Statement Regarding Application for Admission, Readmission, Certification or Registration).

Rule As Issued For 90-day Public Comment

Proposed Rule 8.1 retains the substance of current rule 1-200 while expanding the public policy protections of the current rule. Current rule 1-200 prohibits members (on behalf of another person) from making false statements or omitting material facts in connection with an application for admission to the State Bar. As initially circulated for 90-day public comment, proposed rule 8.1 would have expanded the current rule to petitions for reinstatement after disbarment or resignation, applications for certified legal specialization and applications for special or temporary admission to practice before courts or other tribunals. The rule’s scope, however, was narrowed after the initial 90-day public comment period. (See “Revisions Following 90-Day Post-Public Comment Period, below.”)

The following descriptions relate to the initial public comment version of the proposed rule, which was substantially revised following the initial 90-day public comment period.

Paragraph (a) defines with specificity the applications covered under the expanded scope of proposed rule 8.1. The objective of paragraph (a) is to make clear that the rule applies to applications for admission, readmission, certification and registration.

Paragraph (b) is new and recognizes the need to expand the public protection policy objectives of proposed rule 8.1 to cover conduct related to applications from both members of the California State Bar as well as non-California lawyer applicants (e.g. non-California lawyer seeking authorization to practice as a registered in-house counsel under the Multijurisdictional Program (MJP)).

Paragraph (c) makes clear that the proscriptions against making false statements, omissions or failure to correct a statement known to be false, equally apply to lawyers who are supporting or opposing the application of another person.

Paragraph (d) is derived from current rule 1-200(C) and clarifies that the rule does not apply to a lawyer representing a client/applicant in proceedings relating to admission, readmission, certification or registration.

Proposed rule 8.1 contains two Comments that clarify the rule’s application. Comment [1] clarifies that a person making false statements in connection with that person’s own application can be subject to discipline or cancellation of that person’s admission or other authorization.

Comment [2] relates to paragraph (d) and makes clear that a lawyer who represents a client/applicant is subject to other applicable rules and the State Bar Act.

Non-substantive changes in proposed rule 8.1 include: changing the title to accurately reflect the expanded scope of the rule, reordering the rule to place key definitions in the first paragraph and stylistic changes to track the ABA Model Rule numbering system, format and style conventions. These changes include substitution of the word “lawyer” for “member.”

Revisions Following 90-Day Public Comment Period

After consideration of comments received in response to the initial 90-day public comment period, the Commission made substantial changes to the text and comment of proposed rule 8.1. These changes follow the Commission’s recommendation that proposed rule 3.3 (Candor Toward The Tribunal) be adopted. The Commission believes rule 3.3 is the appropriate source of regulation for statements made to a tribunal. Specifically, rule 3.3, not rule 8.1, should apply to applications for certification or registration under the California Rules of Court.

Text. The Commission limited the scope of proposed rule 8.1 to applications for admission to practice law rather than including within its scope applications for certification or registration under provisions of the Rules of Court. This change is reflected by the substitution of new paragraph (d), which defines “application to practice law” in place of former paragraph (a), which delimited the scope of the rules application to include applications for certification or registration.

In addition to this global change in scope, the Commission has also added a further requirement to former paragraph (b) [now paragraph (a)] that in addition to not making a statement in connection with his or her own application that the lawyer *knows* to be false, the lawyer also must not make such a statement “with reckless disregard to its truth or falsity.” This change was made in response to a public comment received from OCTC.

The Commission also revised former paragraph (c) [now paragraph (b)] to clarify the duties of a lawyer who makes a statement of material fact *in connection with another person’s* application.

The Commission also added new paragraph (c), which imposes a duty on a lawyer, whether in connection with his or her own application or the application of another, to disclose a fact to correct a statement previously made that the lawyer knows has created a “material misapprehension” in the matter, unless the disclosure would violate Bus. & Prof. Code § 6068(e) or rule 1.6.

Comment. The Commission modified Comment [1] to clarify the scope of its application and to provide a citation to a landmark California Supreme Court opinion on admission. The Commission has also added new Comment [2] to clarify the scope of the rule’s application. It has also revised Comment [3] to identify with specificity the obligations of a lawyer who represents an applicant for admission.

With these changes, the Board authorized an additional 45-day public comment period on the revised proposed rule.

Final Commission Action on the Proposed Rule Following 45-Day Public Comment Period

After consideration of comments received in response to the additional 45-day public comment period, the Commission made one non-substantive revision. In paragraph (d), the Commission substituted the word “process” for “provision” to read: “. . . and any similar process relating to admission or certification to practice law in California or elsewhere.”

With this change, the rule Commission voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 8.1 at its March 9, 2017 meeting.

Supreme Court Action (May 10, 2018)

The Supreme Court approved the rule as modified by the Court to be operative November 1, 2018. Omitted asterisks for defined terms were added.

Rule ~~1-2008.1~~ False Statement Regarding Application for Admission to the State Bar Practice Law
(Redline Comparison to the California Rule Operative Until October 31, 2018)

- (a) An applicant for admission to practice law shall not, in connection with that person's* own application for admission, make a statement of material fact that the lawyer knows* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (Ab) ~~A member shall not knowingly make a false statement regarding a material fact or knowingly fail to disclose a material fact~~lawyer shall not, in connection with another person's* application for admission to the State Bar practice law, make a statement of material fact that the lawyer knows* to be false.
- (c) An applicant for admission to practice law, or a lawyer in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known* by the applicant or the lawyer to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to membership in the State Bar; reinstatement to active membership in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.
- (B) ~~A member shall not further an application for admission to the State Bar of a person whom the member knows to be unqualified in respect to character, education, or other relevant attributes.~~
- (C) ~~This rule shall not prevent a member from serving as counsel of record for an applicant for admission to practice in proceedings related to such admission.~~

Comment Discussion

[1] A person* who makes a false statement in connection with that person's* own application for admission to practice law may be subject to discipline under this rule after that person* has been admitted. (See, e.g., *In re Gossage* (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130].)

[2] A lawyer's duties with respect to a *pro hac vice* application or other application to a court for admission to practice law are governed by rule 3.3.

[3] A lawyer representing an applicant for admission to practice law is governed by the rules applicable to the lawyer-client relationship, including Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6. A lawyer representing a lawyer who is the subject of a disciplinary proceeding is not governed by this rule but is subject to the requirements of rule 3.3.

~~For purposes of rule 1-200 "admission" includes readmission.~~