

DRAFTING TEAM REPORT AND RECOMMENDATION: RULE 1-200

Lead Drafter: Clinch
Co-Drafters: Kehr, Peters
Meeting Date: May 29 – 30, 2015

I. CURRENT CALIFORNIA RULE

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 for admission to practice in proceedings related to such admission.

Discussion:

For purposes of rule 1-200 “admission” includes readmission.

II. DRAFTING TEAM’S RECOMMENDATION AND VOTE

There was a consensus among the drafting team members to recommend the proposed rule as amended except as to the question of whether to include a definition of “material fact”, as discussed in Section IX, paragraph (5).

III. PROPOSED RULE (CLEAN)

Rule 1-200 False Statement Regarding Application for Admission, Readmission, Certification or Registration

(A) As used in this Rule, applications for admission, readmission, certification or registration include, but are not limited to: admission or readmission to practice law under Bus. & Prof. C. § 6046 et seq.; certification as a legal specialist under Rule of Court 9.35; admission to practice law under Bus. & Prof. C. § 6062; and appearance and practice under Rules of Court 9.40 through 9.47.

(B) An applicant for admission, readmission, certification or registration shall not knowingly make a false statement of a material fact or knowingly fail to disclose a material fact in connection with that person’s own application.

(C) A member shall not knowingly make a false statement of material fact, or knowingly fail to disclose a material fact, in connection with another person’s application for admission, readmission, certification or registration.

(D) An applicant for admission, readmission, certification or registration, or a member in

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connection therewith, shall not fail to disclose a fact necessary to correct a statement known by the applicant or the member to have created a material misapprehension in the matter, except that this Rule does not authorize disclosure of information otherwise protected by State Bar Rule 3-100 (Confidential Information of a Client).

(E) This Rule does not prevent a member from representing an applicant for admission, readmission, certification or registration in proceedings related to the application, certification, or registration. Other laws or rules govern the responsibility of a lawyer representing such applicant.

Discussion:

[1] A person who makes a false statement in connection with that person's own application can be subject to discipline under this Rule or to later cancellation of that person's admission or other authorization.

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of applicable state constitutions.

[3] A lawyer representing an applicant for admission, readmission, certification or registration, or who represents a lawyer who is subject to disciplinary proceedings, is not governed by this Rule but is subject to the requirements of Rules 3-100 and 5-200.

IV. PROPOSED RULE (REDLINE TO CURRENT CALIFORNIA RULE 1-200)

Rule 1-200 False Statement Regarding Application for Admission, Readmission, Certification or Registration ~~to the State Bar~~

~~(A) A member shall not knowingly make a false statement regarding~~ (A) As used in this Rule, applications for admission, readmission, certification or registration include, but are not limited to: admission or readmission to practice law under Bus. & Prof. C. § 6046 et seq.; certification as a legal specialist under Rule of Court 9.35; admission to practice law under Bus. & Prof. C. § 6062; and appearance and practice under Rules of Court 9.40 through 9.47.

(B) An applicant for admission, readmission, certification or registration shall not knowingly make a false statement of a material fact or knowingly fail to disclose a material fact in connection with ~~an~~ that person's own application ~~for admission to the State Bar.~~

~~(B) C~~ (B) C A member shall not ~~further an~~ knowingly make a false statement of material fact, or knowingly fail to disclose a material fact, in connection with another person's application for admission ~~to the State Bar of a person whom,~~ readmission, certification or registration.

(D) An applicant for admission, readmission, certification or registration, or a member in connection therewith, shall not fail to disclose a fact necessary to correct a statement known by

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the applicant or the member ~~knows to be unqualified in respect to character, education, or other relevant attributes to have created a material misapprehension in the matter, except that this Rule does not authorize disclosure of information otherwise protected by State Bar Rule 3-100 (Confidential Information of a Client).~~

~~(C) E~~ This ~~rule shall~~ Rule does not prevent a member from ~~serving as counsel of record for representing~~ an applicant for admission, readmission, certification or registration, to practice in proceedings related to the application, certification, or registration ~~such admission.~~ Other laws or rules govern the responsibility of a lawyer representing such applicant.

Discussion:

[1] A person who makes a false statement in connection with that person's own application can be subject to discipline under this Rule or to later cancellation of that person's admission or other authorization. ~~For purposes of rule 1-200 "admission" includes readmission.~~

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of applicable state constitutions.

[3] A lawyer representing an applicant for admission, readmission, certification or registration, or who represents a lawyer who is subject to disciplinary proceedings, is not governed by this Rule but is subject to the requirements of Rules 3-100 and 5-200.

V. PUBLIC COMMENTS SUMMARY

No public comments have been received.

VI. OCTC / STATE BAR COURT COMMENTS

• Jayne Kim, OCTC, 4/20/15:

1. Rule 1-200 should be expanded to apply to petitions for reinstatement after disbarment or resignation, applications for certified legal specialization and applications for special or temporary admission.

2. The rule should also include false statements and failures to disclose a material fact which result from gross negligence.

An attorney's unqualified and unequivocal statement made under circumstances that should have caused him or her some uncertainty are at minimum deceptive and support imposing discipline. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 173-174.) Moreover, California disciplines attorneys for dishonesty and other acts of moral turpitude based upon gross negligence. (See *Vaughn v. State Bar* (1972) 6 Cal.3d 847; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar 266; *In the Matter of Dale*

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(Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798 [gross negligence in representation to third party]; and *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80.)

3. Finally, the comment to the rule should advise that an applicant's false statements and omissions in an application for admission can result in discipline or the cancellation of their law license. (*Goldstein v. State Bar* (1989) 47 Cal.3d 937 and *In the Matter of Pasyanos* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746.)

- **Commenter Name, State Bar Court, Date:**

No comments from State Bar court staff have been received.

VII. COMPARISON OF PROPOSED RULE TO APPROACHES IN OTHER JURISDICTIONS (NATIONAL BACKDROP)

Information from State Bar staff:

Based on information posted at the ABA website, a majority of United States jurisdictions have adopted a rule on this topic that is the same as, or substantially similar to, ABA Model Rule 8.1. An example, set forth below, is Delaware Rule 8.1.

Delaware Rule 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

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

The ABA State Adoption Chart for Model Rule 8.1, which is the direct counterpart to rule 1-200, is posted at:

- http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_8_1.pdf
- 34 states have adopted 8.1 verbatim (AL, AK, AZ, AR, CT, DE, HI, ID, IL, IN, IA, KS, KY, ME, MA, MN, MS, MT, NE, NV, NJ, NM, NC, ND, OK, PA, SC, SD, TN, UT, VT, WV, WI, WY); 14 jurisdictions have adopted something substantially similar to model rule 8.1 (CO, DE, FL, GA, LA, MD, MI, MO, NH, OH, OR, RI, VA, WA); and 3 states have adopted something substantially different to model rule 8.1 (CA, NY, TX).

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VIII. CONCEPTS ACCEPTED/REJECTED; CHANGES IN DUTIES; NON-SUBSTANTIVE CHANGES; ALTERNATIVES CONSIDERED

Concepts Accepted (Pros and Cons):

- Expand the scope of the current rule to include all forms of applications related to the practice of law.
 - Pros: The policy and intended public protection of the current rule should extend to other lawyer applications related to practice. For example, a member who knowingly makes a false statement of a material fact in connection with an application to become a certified specialist commits misconduct that involves deception and demonstrates a probable intent to mislead clients and the public. We believe that false statements of material fact in all such applications pose a similar danger to the public and to the reputation of the Bar and the legal system.
 - Cons: Although there are no known cons to this proposed change, one might criticize the expansion as incomplete because it does not cover all member submissions to the State Bar, such submissions include, but are not limited to, the following: member submissions of MCLE compliance cards (see section IX below re open issues for Commission discussion), applications for registration as a law corporation or limited liability partnership, IOLTA account update forms, applications to be transferred to or from voluntary inactive status, or applications for membership fee waivers.

- Expand the scope of the rule to include applications by individuals who are not members of the State Bar to appear and practice in California, such as an application by a lawyer licensed in another state for registration as a registered in-house counsel in California
 - Pros: This change increases public protection and recognizes MJP developments that have occurred since the last comprehensive revision of the rules. The current rule is too narrow in only protecting the public from conduct committed by persons seeking admission or readmission as members of the State Bar. Non-California lawyers who apply or otherwise seek express authorization to practice law in California without becoming a member of the Bar pose the same risk of harm and should be included within the scope of this rule. In terms of the need for oversight and public protection, there is little difference between an application submitted by bar applicant seeking to become a member of the State Bar and an application, for example, by a non-California lawyer seeking authorization to practice as a registered in-house counsel California.
 - Cons: The administrative costs associated with pursuing discipline against a person who is a non-California lawyer and possibly a non-California resident may be higher than the costs when disciplining a member.

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- As part of the foregoing expansion of the rule, include a definition of applications for admission, readmission, certification or registration.
 - Pros: The proposed definition adds clarity as to the prohibited conduct and facilitates both compliance and enforcement.
 - Cons: There are no known cons to this proposed change.
- Clarify that current rule 1-200(A) prohibits false statement by an applicant. Current 1-200(B) applies to conduct in furtherance of another person's application, but it vaguely encompasses the situation in which the second lawyer "knows to be unqualified in respect to character, education, or other relevant attributes." We recommend applying the same objective standard in both situations.
 - Pros: Current paragraph (B) is deficient in that the indefiniteness of its language turns it into an aspirational standard that lacks disciplinary teeth.
 - Cons: There are no known cons to this proposed change.
- Add a statement indicating that a person who makes a false statement in connection with that person's own application for admission or readmission may be subject to the consequence of cancellation of their law license.
 - Pros: To be effective, the rule should deter the prohibited conduct. The prospect of discipline offers a level of deterrence but additional deterrence is achieved by indicating that a person's law license may be subject to cancellation.
 - Cons: There are no known cons to this proposed change.

Concepts Rejected (Pros and Cons):

- Retain the current rule without any changes.
 - Pros: Retaining the current rule promotes continuity on this longstanding disciplinary standard.
 - Cons: Ambiguities in the current would be perpetuated and an opportunity to expand the scope of the rule would be lost. The rule would fail to address the development of MJP.

Changes in Duties/Substantive Changes to the Current Rule:

The rule would be expanded to cover: (1) applications by individuals who are not members of the State Bar to appear and practice in California, such as an application by a lawyer licensed in another state for registration as a registered in-house counsel in California; and (2) member applications made to the State Bar for certification, such as a member's application for certification as a specialist. Both of these proposed expansions are substantive changes to the current rule that add new duties in the rules.

Non-Substantive Changes to the Current Rule:

We proposed reordering the rule to place the key definition in the first paragraph so that a reader will understand what follows. With this exception, all of the proposed changes to the rule are substantive.

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Alternatives Considered:

- In accordance with the OCTC comment, change the language of the current rule's prohibition to include an explicit "gross negligence" standard with regard to both false statements and failures to disclose material facts. We recommend against this change. We see no need for a negligence standard with respect to the applicant because he or she will know the accuracy of information provided in any of the settings addressed by the rule; the applicant already is subject to professional discipline for providing significant false information. We recommend against this change for a lawyer who supports an applicant because doing so would interfere with the processing of applications by making it harder for an applicant to obtain support. It is foreseeable that this would occur because of the additional investigatory burden placed on the second lawyer and the threat of discipline for investigating badly.
- Regarding the proposed expansions, rely on existing general law, such as Rule 1-100(D)(2) (re applicability of rules generally to non-California lawyers), the prohibition against conduct involving moral turpitude, and the ability to seek discipline for signing a document under penalty of perjury that includes false statements of material fact. (Rejected)

IX. OPEN ISSUES/CONCEPTS FOR THE COMMISSION TO CONSIDER

(1) New rule Discussion paragraph recommended by OCTC:

OCTC requested the language below be added to proposed Rule 1-200 as a new Discussion paragraph. The drafting team recommends against adoption of the Comment because we have recommended against the addition of a negligence standard, as also requested by OCTC.

"An attorney's unqualified and unequivocal statement made under circumstances that should have caused him or her some uncertainty are at minimum deceptive and support imposing discipline. (In the Matter of Chestnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 173-174.) Moreover, California disciplines attorneys for dishonesty and other acts of moral turpitude based upon gross negligence. (See Vaughn v. State Bar (1972) 6 Cal.3d 847; In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266; In re Matter of Dale (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798 [gross negligence in representation to third party]; and In re Matter of Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80.)"

(2) Expanding the scope of the current rule to cover a member's submission of MCLE compliance cards. Similar to the other expansions proposed to the drafting team, this change would be a substantive change that expands a lawyer's duties. However, the State Bar's recent MCLE audit activity suggests that this change might not be necessary to redress deceptive submissions of MCLE compliance.

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- (3) Changing “member” to “lawyer” as general proposition for the entire proposed rules.
- (4) Using the ABA rule numbering and format as a general proposition for the entire proposed rules.
- (5) Adding a definition of “material fact”, which could be done as follows: “(1) The definition of a material fact as used in the context of Rule 1-200 is a substantial likelihood that a reasonable person would consider it important in evaluating whether an applicant for admission, readmission, certification or registration by the State Bar is of requisite good moral character. (See *In the Matter of Pasyanos* (Review Department 2005) 4 Cal. State Bar Ct. Rptr. 746.” This addition could be part of the rule or in a Comment paragraph. At least one member of the drafting team recommends against this addition because he does not think it sensible to burden the Rules or Comments with definitions of concepts of general legal application, as opposed to words or phrases that are defined for the Rules (as is done in paragraph (a) of this proposal); at least one member of the drafting team thinks a definition should be included in the Rule.

X. COMMENTS FROM DRAFTING TEAM MEMBERS OR OTHER COMMISSION MEMBERS

Clinch

- None

Kehr

- None

Peters

- None

XI. RECOMMENDATION AND PROPOSED COMMISSION RESOLUTION

Recommendation:

Adopt proposed amended rule 1-200.

Proposed Resolution:

RESOLVED: That the Commission adopts proposed amended rule 1-200 as set forth in this report.

XII. DISSENTING POSITION(S)

None.

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XIII. FINAL COMMISSION VOTE/ACTION

[Date of Vote]

[Action: Proposed amended rule adopted or not adopted]

[Record of Roll Call Vote]

CURRENT CALIFORNIA RULE 1-200
“False Statement Regarding Admission to the State Bar”

I. Text of Current Rule:

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 for admission to practice in proceedings related to such admission.

Discussion:

For purposes of rule 1-200 “admission” includes readmission.

II. Background/Purpose:

The predecessor to current rule 1-200, former rule 1-101, became operative January 1, 1975. It was entitled “Maintaining Integrity and Competence of the Legal Profession.” Former rule 1-101 incorporated two concepts from Disciplinary Rule (DR) 1-101 of the ABA Model Code of Professional Responsibility. First, the rule prohibited a member from furthering the application for admission of another person known to be unqualified in respect to character, education, or other relevant attribute of a lawyer. Second, the rule provided an exception that permitted a member to serve as counsel of record to an applicant for admission in proceedings related to such admission.

Former rule 1-101 was amended, renumbered, and made operative effective May 27, 1989. The amendments included renaming the rule to “False Statement Regarding Admission to the State Bar.” In addition to carrying forward the ABA-derived prohibition and exception identified above, current rule 1-200 was expanded to prohibit false statements on one’s own application for admission. This expansion was based on the Supreme Court’s inherent power to discipline a member for acts committed prior to submission. (*Stratmore v. State Bar* (1975) 14 Cal.3d 887.) The new language was derived from ABA Model Code of Professional Responsibility DR 1-101, language that had previously been rejected in the 1975 version of the rule. In addition, the 1989 amendments added a Discussion section that provides: “For purposes of Rule 1-200 ‘admission’ includes readmission.”

III. Input from the State Bar Office of the Chief Trial Counsel (OCTC):

A. In a 2001 Letter to the first Commission, OCTC provided the following comment on Rule 1-200:

OCTC recommends revising this rule to include knowingly failing to respond to lawful demands for information from an admissions or disciplinary authority. It also revises the rule so that the rule applies to furthering the application of a judicial officer as well as an application for admission to the State Bar.

The proposed changes are as follows:

(A) A member must not knowingly make a false statement regarding a material fact or knowingly fail to disclose a material fact in connection with an applicant for admission to the State Bar.

(B) A member must not further an applicant for admission to the State Bar or judicial office of a person whom the member knows to be unqualified in respect to character, education, or other relevant attributes.

(C) This rule will not prevent a member from serving as counsel of record for an applicant for admission to practice in proceedings related to such admission.

OCTC COMMENTS:

OCTC recommends we add the requirement that attorneys not further the applications of judicial candidates who they know to be unqualified. There is no reason an attorney should be permitted to further a judicial candidate known to be unqualified, when he or she could not further the application of a lawyer known to be unqualified. See Section VIII., below.

B. New Comments from OCTC:

(Note: OCTC is expected to provide new comments on this rule. These comments will be distributed to the drafting team when they are received from OCTC.)

IV. Potential Deficiencies in the Current Rule:

A. See above input from OCTC.

B. The scope of the rule might be too limited. At present the rule applies only to applications for *admission (or readmission) to the State Bar*. However, there are other avenues to practice in California for lawyers that do not involve full-fledged admission to the State Bar. These avenues include an application for permission to appear *pro hac vice*, (Cal. Rule of Court, rule 9.41) and the multijurisdictional practice rules that permit a lawyer licensed and in good standing in another

jurisdiction to be certified to practice law in limited circumstances in California (i.e., California Rules of Court, rules 9.45 to 9.48). Given that the same principle underlying current rule 1-200 – to prohibit a lawyer from advancing the application for admission of a lawyer who is unqualified and would likely harm members of the public – would apply in these other contexts, broadening the scope of the rule to include those contexts might be warranted.

Related to this narrow issue is the use of the defined term “member” throughout the rule. “Member” is defined in rule 1-100(B)(2) as “a member of the State Bar of California.” Because applicants for the other kinds of permission to practice law in California discussed above are not “members,” a different term might be substituted to be more inclusive of the lawyers intended to be regulated by the rule. See Section VIII., below.

C. Rule language creates an ambiguity as to its application. Current rule 1-200(A) provides that 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.” (Emphasis added.) As noted in the Background/Purpose section (Section II., above), the intent of the 1989 amendments was to include a prohibition on false statements on *one’s own* application for admission. However, paragraph (A) refers only to “*an application* for admission.” A question might arise whether a member with whom an applicant discusses the applicant’s application in a non-lawyer-client relationship (e.g., a law professor discussing a student’s application to the Bar) has an affirmative duty to follow up and ensure that the applicant has disclosed to the Bar material information that was revealed to the member during the discussion. The affirmative duty would be based on a member’s duty to “not knowingly ... *fail to disclose* a material fact in connection with *an application*” (Emphasis added). This ambiguity could be removed by specifying that “application for admission” in paragraph (A) refers to the *applicant’s own application*. Duties of a third person member in relation to another person’s application to the Bar would still remain under paragraph (B). See Section VIII., below.

D. Definition contained in the Discussion rather than the rule. The Discussion to rule 1-200 provides that “‘admission’ includes readmission.” In the California Rules, definitions are typically contained in the rule proper. (E.g., rule 1-400(A), defining “communication;” rule 3-310(A)(1), defining “disclosure.”) The Discussion might be moved into the rule proper. See Section VIII., below.

V. **California Context:**

A. Other contexts in which lawyers might seek permission to practice law in California. As noted, (see Section IV.B.), there are other contexts besides admission or readmission to the State Bar (under Business & Professions Code § 6062) in which applicants might seek permission or certification to practice law

in California and which perhaps should be governed by the rule. These contexts include the following, as permitted under the referenced California Rule of Court:

- Rule 9.40 (Counsel Pro Hac Vice)
- Rule 9.41 (Appearances by Military Counsel)
- Rule 9.42 (Certified Law Students)
- Rule 9.43 (Out-of-State Attorney Arbitration Counsel)
- Rule 9.44 (Registered Foreign Legal Consultant)
- Rule 9.45 (Registered Legal Services Attorneys)
- Rule 9.46 (Registered In-House Counsel)
- Rule 9.47 (Attorneys Practicing Law Temporarily In California as Part of Litigation)
- Rule 9.48 (Nonlitigating Attorneys Temporarily In California to Provide Legal Services)

In addition to the foregoing rules, Business and Professions Code section 6068(i) provides:

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

Further, Code of Civil Procedure section 1282.4 provides a procedure by which out-of-state arbitration counsel might obtain a certificate to serve as arbitration counsel.

VI. Approach In Other Jurisdictions (National Backdrop):

A. Other jurisdictions differ from California, with all of the jurisdictions having adopted some version of ABA Model Rule 8.1.¹ See ABA State Adoption Chart at:

http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_8_1.pdf

Thirty states have adopted model rule 8.1 verbatim.² Nineteen jurisdictions have adopted something substantially similar to model rule 8.1.³

VII. Public Comment Received by the First Commission:

The clean text of a proposed new rule 8.1 drafted by the first Commission and adopted by the Board to replace rule 1-200 is enclosed with this assignment, together with the synopsis of public comments received on that proposed rule and the full text of those comments. Although the proposed rule differs from current rule 1-200, the drafting team might consider to what extent, if any, the public comments received on the proposed rule provide helpful information in analyzing the current rule. To facilitate the review and to appreciate the relevance of these public comments, a redline comparison of the proposed rule showing changes to rule 1-200 is also enclosed with the public comments received. However, given the Board's charge to engage in a comprehensive review of the current rules and to retain the historical nature of the California Rules as "a clear and enforceable articulation of disciplinary standards," a drafting team that considers amendments developed by the first Commission should not presume that the approach taken by the first Commission was appropriate to achieve those objectives.

¹ The black letter of Model Rule 8.1 provides:

Rule 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
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

² Alabama, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, Wisconsin, and Wyoming.

³ Colorado, District of Columbia, Florida, Georgia, Illinois, Iowa, Louisiana, Maryland, Michigan, Missouri, New Hampshire, New Mexico, New York, Ohio, Oregon, Rhode Island, Texas, Virginia, and Washington.

VIII. Possible Issues to Consider Identified by Professional Competence Staff Following a Review of the Relevant Proposals that were Developed by the Prior Commission and Adopted by the Board:

Bearing in mind the Commission's Charter to engage in a comprehensive review of the current rules and to retain the historical nature of the California Rules as "a clear and enforceable articulation of disciplinary standards," Professional Competence staff identified the following rule amendment issues (in no particular order) that the drafting team might consider. The drafting team need not address any of the issues. For example, if after critically evaluating an issue addressed by a revision made by the first Commission, the drafting team determines that the revision does not address an actual (as opposed to theoretical) public protection deficiency in the current rule, then the drafting team should hesitate to recommend a change to the current rule despite the prior decision by the first Commission and the Board to address the issue. (Note: For the sake of completeness and ease of reference, some of the issues listed below may have already been mentioned in connection with other information provided above, such as in connection with the approaches taken in other jurisdictions or prior public comment. Multiple mentions of an issue do not necessarily warrant the drafting team taking action on an issue.)

(1) Whether to include an additional requirement in the rule that a lawyer must not further the applications or candidacies of persons seeking judicial office whom the lawyer knows to be unqualified. (See Section III.A., above.)

(2) Whether to expand the scope of the rule so that it applies not only to applications to the State Bar but also other applications seeking permission to practice law in California. (See Section IV.B., above.)

(3) Whether to clarify that current rule 1-200(A) applies to an applicant's own application. (See Section IV.B., above.)

(4) Whether to move the definition of "admission" currently in the Discussion to the rule proper. (See Section IV.D., above.)

(5) Whether to make stylistic changes (e.g., substituting the words "will" or "must" for the word "shall") as requested by OCTC. (See Section III.A., above.)

IX. Research Resources:

- [Business & Professions Code section 6068\(i\)](#)
- [Code of Civil Procedure section 1282.4](#)
- [Rule of Court](#), rules 9.40 (Counsel Pro Hac Vice); rule 9.41 (Appearances by Military Counsel); rule 9.42 (Certified Law Student); rule 9.43 (Out-of-State Attorney Arbitration Counsel); rule 9.44 (Registered Foreign Legal Consultant); rule 9.45 (Registered Legal Services Attorneys); rule 9.46 (Registered In-House Counsel); rule 9.47 (Attorneys Practicing Law)

Temporarily In California as Part of Litigation); rule 9.48 (Nonlitigating Attorneys Temporarily In California to Provide Legal Services).