

## ETHICAL LAWYERING

### Comparison Chart

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Topic	ABA Model Rules [use in CA if CRPC silent]	CRPC (CA Rules of Pro Conduct)	California B & P (CA Statute)
<b>Admissions to Practice</b>	<p>8.1: applct OR atty cannot knowingly make false stmt, fail to disclose rqstd info</p> <p>8.5: <i>all</i> mbrs &amp; non-mbrs IN jxdn Licensing state has 1<sup>o</sup> jxdn</p> <p><u>Muti-Jxdnl Practice (MJP)</u> 5.5: Safe Harbor Rule for temp practice by out-state if assoc'd w/ in-state atty; related to out-state proceeding and reas. expects court order for in-state rep; ADR; reas. related to atty's practice</p> <p><u>In-house counsel</u> w/ systmtc &amp; continuous in-state presence (1 client &amp; NO advertising)</p>	<p>1-200: mbr (<b>NOT applct</b>) knowingly make false stmt or support an unqlfd applct</p> <p>1-100: <i>all</i> mbrs &amp; in-state non-mbrs</p> <p>Courts allow non-mbrs to appear w/ CA mbr by <u>court order</u> (= pro hac vice)UNLESS non-mbr is CA resident, reg emplyd in CA or substnl bus in CA</p> <p>Legal Svc Attys can practice for &lt; 3yrs if reg'd &amp; sup'd by CA atty</p> <p>Reg'd (annually) <b>in-house cannot appear @ court</b> or rep indiv employees on personal basis</p>	<p>6125: must be active member of Bar 6126: viol = msdmr (1 yr jail &amp;/or \$1K) 6060: 18, good char,2 yrs college, reg as law stdt, pass 1 yr exam, complete JD, score 79+ on MPRE, pass Bar</p>
<b>Misconduct</b>	<p>8.4: w/i professional scope PLUS criminal acts that reflect badly on honesty, conduct involv dishonesty or fraud</p> <p>8.3: snitch if <i>substnl</i> qstn re conduct (unless info via A/C Priv)</p> <p>5.5: cannot practice or assist in unath'd practice (xcpt client who self-rep's)</p> <p>Non-atty cannot be director/officer of firm</p>	<p><b>NO duty to snitch!</b></p> <p>1-300: cannot aid a.o. in unauth'd practice or practice out-state if not admitted (UPL)</p> <p>1-311: cannot employ disbarred mbr XCPT clerical or paraprofssnl work</p>	<p>6101: <b>convctn of felony or msdmr involv moral turp</b> (NO admin hearing!)</p> <p>6106: <b>any act involv moral turp</b>—of felony or msdmr convctn not req'd (i.e. DUI)</p> <p>Out-state atty may rep @ arbitration if cert timely filed</p>
<p>Unauthorized Practice of Law (UPL)</p> <ul style="list-style-type: none"> <li>• non-atty</li> <li>• disbarred &amp; inactive</li> <li>• other jxds</li> </ul>			

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<b>Competence</b>	<p>1.1: reqs knowledge, skill, thoroughness, preparation (can study, refer or consult if new field) BUT ok to rep in <i>emergency</i></p> <p>Must act zealously</p> <p>1.3: act w/ reas. diligence &amp; promptness</p> <p>1.18: Duty to non-client (don't give curbside advice!)</p> <p><u>Supervision</u></p> <p>5.1: attys (not firm) must make reas. effort to ensure conformity to rules if atty ratifies other's conduct or partner/manager &amp; takes no remedial action</p> <p>5.2: subord. doesn't violate if acing on orders</p> <p>Rules ≠ basis for civil liab.</p> <p><u>Malpractice Liability</u></p> <p>4.3: cannot limit unless client is <i>actually</i> indep. rep'd</p> <p>Client must prove duty, breach, actual &amp; proximate cause, damages</p> <p><u>Pro Bono Work</u></p> <p>6.1: Recommended, but not req'd (50 hrs/yr or contrib. \$)</p>	<p>3-110: cannot intentionally, recklessly or repeatedly fail to perform (can study or consult)</p> <p><b>Not req'd to be zealous</b></p> <p>Unhappy client can rqst set-aside verdict, appeal, rpt atty to Bar, sue</p> <p><u>Positive Misconduct Rule</u></p> <p>Court can dismiss upon sworn atty's stmt re mistake &amp; order compensatory fees &amp;/or max \$1K penalty (Alt = malpractice suit)</p> <p>1-100: Rules ≠ basis for civil liab. (violtn are not negl per se, but can be admitted to prove...)</p> <p>3-400: cannot limit liab <b>at all (!)</b> BUT atty can settle claim w/ client if client <i>advised</i> to get indep counsel</p> <p><b>"Never reject public service"</b></p>	<p><b>6068: <u>Duties</u></b></p> <p>Uphold laws, respect judiciary, only just proceedings, don't mislead, confidently</p> <p>Malpractice SOL ( @ CA) = 1 yr from discover, 4 yrs from occurrence, whichever sooner</p> <p>Tolled if no injury to client, continuous rep, willful concealment by atty, legal or physical disability</p>
<b>Confidentiality</b>	<p>1.6: cannot disclose info relating to rep, regardless of source</p>	<p><i>Potential</i> conflict req's consent @ CA</p>	<p><b>6068:</b> protects A/C communications &amp; secrets (client reqstd or detrimental</p>

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	<p>XCPT: <i>may</i> discl w/o informed consent re risks &amp; alts if</p> <ul style="list-style-type: none"> <li>• implied authorization</li> <li>• prevent certain death/bodily harm (now or later)</li> <li>• reas. certain of <i>substnl</i> fncl injury + client abuse A/C relationship (atty must w/d)</li> <li>• avoid ongoing injury from past acts</li> <li>• get advice re atty's compliance or defend</li> <li>• court order</li> </ul> <p>Can't disclose if 3<sup>rd</sup> party could discover</p> <p>3.3: trumps everything xcpt candor to court (even after close of procdg) cannot offer false evidence must, if necessary, reveal client's perjury to court</p> <p>1.13: <u>Org Injury</u> Confide trumps unless violation of law will result in substnl corp (or govt) injury (MUST refer to s.o. higher in org) <b>Whistle Blower</b> = can reveal info if clear violation of law (<i>not necssrly criminal or that atty asstd</i>) AND atty reas certain substnl injury will occur If atty discharged or w/d, then highest @ org informed</p>	<p><b>SAME as 1.6 w/o fncl xcptn</b></p> <p>3-100: before disclosure, atty must make effort to deter client, inform of intent to disclose, disclose only minimum, BUT not req'd to disclose (= safe harbor)</p> <p>3-600: NO whistle blower xcpt → must or may w/d if org continues to violate after atty goes up chain</p>	<p>info) XCPT: prevent client's criminal act that results in death/bodily harm (not req'd to disclose)</p>
Conflicts of Interest	<p>Candor &gt; Conflicts</p> <p>1.8: cannot use info to client's detriment w/o informed consent, <b>confirmed in writing</b></p> <p>Client can w/d consent</p> <p>1.9: <u>Former Clients</u> cannot use info (<i>any</i> source) fr former client unless generally known Confclt for <u>former</u> client if actns <i>substnly related</i>—can be unreltd if <u>current</u> client</p>	<p>3-310: adverse interests, incl clients, 3<sup>rd</sup> party payor, aggreg settlemts</p> <p><i>Written disclosure re actual/foreseeable conseq AND consent must be written</i></p> <p>SAME re cannot use info from former client</p>	

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	<p>Conflict btw former &amp; current clients must be <i>materially adverse in substnly same matter</i> unless atty has no knowledge of info (imputed to firm)</p> <p>1.7: <u>Current Clients</u> (= Basic Rule) cannot rep if concurrent conflict or rep materially limited or if atty reas believes that he can't offer diligent svc (= consentable) <b>BUT some conflicts are non-consentable</b> (i.e. adverse parties or cross-litigants)</p> <p>Can argue inconstant legal postns if diff forums, times or clients (unless effectvness ltd → i.e. substv v procdrl issues)</p> <p>1.10: <u>Imputation</u> (consentable) imputable to firm—even if migrating to new firm—unless based on persnal interests (can be waived) → must do conflict-screening (reas adeq measures) BUT does not cure conflict</p> <p>Former govt. atty—not imputed if atty screened, no fees shared, firm notifies govt of conflict</p> <p>Agg. Settlmnt req written consent</p> <p>3.7: <u>Atty as Witness</u> atty cannot advocate where he might be called as witness unless dq would cause hardship (jury &amp; bench trials) Partner can testify</p> <p>Must disclose if married to oppsg atty</p>	<p><b>All conflicts are consentable</b> xcpt cross-litigants</p> <p>SAME: Screening will not repair imputed conflict</p> <p>SAME re consent for aggr sttlment</p> <p>5-210: SAME re advct/witnss conflict <b>(jury only) AND client consents</b></p> <p><b>Must disclose <i>in writing</i> if close relationship w/ opposing atty (or w/ party, witness, or prior relationship)</b></p>	

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Advertising	<p>7.2: cannot pay for referrals xcpt ref angy fee, buy anthr practice, non-exclsv reciprocal referral agrmt when client informed Central Hudson Test: adv restctns must be narrow &amp; further sunstnl state interest</p> <p>7.1: not misleading or deceptive BUT puffing &amp; coupons ok</p> <p>7.4: can say "specialize", but not "cert"</p> <p>7.5: no misleading firm names but trade names ok</p> <p>7.3: no in-person solctn, live telephone, real-time electronic if pecuniary gain unless soliciting anthr atty or prior relationship No solictn if prospect wants to be unsoltct or involves coercion</p>	<p>2-200: <b>no compnstn or reward allowed to anthr atty xcpt occasnl gratuity</b></p> <p>1-400: commnctn (offer to public) not untruth, deceptive, ommissns, coerce, mislead → eg guarantee, testimonial &amp; dramatztn w/o disclmr, "no fee w/o recover" unless costs discl Cannot state "cert" unless true <b>All solctn (not even cocktail party) prohibited unless cnstitly protected</b> xcpt if prior relatnshp related to previous/current svcs BUT pro bono &amp; political allowed</p>	6157: no false, misleading, deceptv
Prospective Clients	<p>1.18:a.o. who discusses possibility of becoming client duty of confidentiality cannot share significantly harmful info or rep 2<sup>nd</sup> client in substnlly same matter potential conflict ok if atty screened fr info (not ok for current client)</p> <p>1.16:must decline if fraudulent claim</p> <p>1.2: can discuss/dissuade proposed course of conduct if criminal or fraud</p> <p>8.4: atty cannot knowingly assist another in fraud or crime</p> <p>6.2: no oblgtn to rep unless appointed (unless voltn of ethics, unreas fncl burden, repugnant cause)</p> <p>1.13:Org as Client rep's org if retained by org and does not rep indiv constituents</p> <p>4.2: employee deemed rep'd if officer</p>	<p>2-400: cannot discriminate</p> <p>Disclose for co-parties: A/C priv not appld, must share infor w/ co's, atty will w/d if conflict ripens w/o consent</p> <p>3-200: must decline if unwarranted claim</p> <p>2-100: must be <i>current</i> employee to be</p>	

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	<p>or mgr or actions subj of litigation</p> <p>Hot Potato Doctrine = cannot drop Client #1 to rep #2</p> <p>1.11: <u>Govt. Employees</u> Screening permitted for atty who migrates from govt to pvt practice CanNOT rep matter (= dispute) @ pvt practice of atty personally &amp; substnlly involved No conflict if migrating from diff agencies</p> <p>1.14: <u>Protective Action</u> ok if atty reas believes client is impaired, incl family, vol. surrogate, agency, and can reveal ltd info</p> <p><u>Bus Transaction w/ Client</u> 1.8: fair &amp; reas, indep counsel, informed written consent</p> <p>1.18: <u>Bus. Transctns</u> no bus w/ client UNLESS terms are fair + fully disclosed in writing + advised to seek indep counsel + informed consent <i>in writing</i></p> <p><u>Sexual Relationship</u> 1.8: ok <u>only</u> if prior relationship</p>	<p>rep'd</p> <p>3-300: SAME</p> <p>3-300: adverse business interests = conflict</p> <p><b>4-300: atty cannot buy at client's probate sale (client cannot waive)</b></p> <p>3-120: <b>cannot demand sex as condition of rep or xracs undue influence or if can't render svc competently</b></p>	
Fees	<p>1.5: cannot charge <i>unreas</i> fee Hourly fees need not be written—contingent in writing Factors (8): time/labor, preclude other atty, customary fee, results, time constraints, nature of A/C relationship, experience, fiexd or contingent Fee-sharing btw firms ok if proportionate and informed consent by client (not allowed for family law or</p>	<p>4-200: cannot chrg <i>unconscionable</i> fee Factors: SAME + <b>fee relative to svc, informed consent (incl. learning curve)</b></p> <p>2-200: req. discl. &amp; <i>written</i> consent by client for fee-sharing</p>	<p>6148: <b>must be in writing if expect fee &gt; \$1K &amp; must incl calcultn, nature of svcs, A/C responsibilities</b></p> <p>6147: Cont. fees must disclose method of calc, billing for extraord svc, fee is not "set by law" Must provide dupl. copy of contingent fee contract to client (or voidable)</p>

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	<p>criminal)</p> <p>5.4: no fee-sharing w/ non-atty BUT can incl in profit-sharing plan or share court-awarded fees if non-profit</p> <p>1.8: cannot <i>solicit</i> substnl gift fr client Rstmt §127—cannot <i>accept</i> gift unless related, insubstnl, indep counsel</p> <p>Cannot acppt 3<sup>rd</sup> party pymt unless informed consent (NO WRITING!), noy interfere w/ A/C relatnshp, confid not breached</p> <p>Atty may advance fees/costs if contingnt agrmt BUT no fncl asstnce (unless indigent client)</p> <p>1.15: <u>Retainer</u> must make complete acctg of trust acct Cannot w/h funds to coerce client</p>	<p>1-320: SAME as 5.4 Atty must disclose in writing if related to opponent's atty</p> <p>4-400: <b>cannot induce substnl gift</b></p> <p><b>3-310: informed written <u>consent</u> for 3<sup>rd</sup> party payor unless insur co w/ rt to select counsel for insured (Cumis Counsel: indep atty if conflict btw co &amp; insured)</b> informed written <u>disclosure</u> if atty has relationship to party in same matter</p> <p>4-210: atty cannot pay bus or pers xpns for client <b>xcpt w/ consent tht atty will be reimb from funds to be collected</b> Atty can <i>loan</i> if written promise to repay (subj to bus transactn)</p> <p>3-700: True Retainer is not dep'd @ trust acct (buys atty's attn)</p> <p>4-100: SAME re coercion &amp; acctg</p>	
Communications	<p>1.4: explain so client can make informed decision</p> <p>4.2: cannot communicate with rep'd indiv unless counsel present</p> <p>1.2: must abide by client's decision, even if detrimental rep ≠ endorsement of client's actions</p>	<p>3-500: must keep client informed of significant developments</p> <p>3-510: written settlement offers must be presented (<i>all</i> offers if criminal)</p> <p>2-100: Same as 4.2</p>	

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Improper Advocacy	<p>FRCP 11: No frivolous claims allowed (BUT ok even if lo prob of win) w/ 21-day safe harbor to give atty time to investigate &amp; w/d claim</p> <p>3.1: claim req's good faith argument but can develop evidence thru discovery after claim filed NO claim for malicious harassment allowed</p> <p>3.5: atty cannot disrupt <i>any</i> proceeding CanNOT commncate w/ juror w/o court order</p> <p>4.4: atty cannot embarrass others</p> <p>3.3: must discl directly adverse info fr controlling jxdn (= mndatory auth) Must correct previously-made false stmts</p> <p>3.2: make reas effort to expedite discovery</p> <p>3.4: no frivolous discvry reqsts NO personal opinion unless sworn to testify</p> <p>3.6: no out-court stmt by current or former atty if knows it will be public and have substnl risk of material prejudice xcpt id claim, anything @ public record, scheduling, rqst asstnce, forwarn of harm, accused info @ indictment</p>	<p>CCP §128.7: SAME</p> <p>3-200: <b>cannot file w/o probable cause</b> or for malicious reasons Atty cannot harass</p> <p>5-320: <b>cannot commncate w/ (potential) juror or his family if connected w/ case, BUT can talk re non-casew matters (not imputable)</b></p> <p>5-220: cannot suppress evidence</p> <p>5-120: SAME re public disclosure</p>	
Trial Rules	<p><u>Expert Witness</u> 3.4: may pay, but not contingency fee May reimb xps for lay witness</p> <p><u>Tangible Evidence</u> Must t/o over incriminating evid w/o naming source (if fr client) Atty can look but not alter evid</p> <p><u>Client Perjury</u> 3.3: not knowingly offer evid atty</p>	<p>5-310: SAME</p> <p>5-200: <b>atty must use narrative</b></p>	<p>6068: confidentiality may be breached only</p>

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	<p>knows is false (but resolve in favor of client, if questionable) thru <i>entire</i> case—may refuse to offer</p> <p>Must take immed remedial measures if material evid incl forewarn client re felony of perjury, w/d of atty, duty to disclose (4 R's: recess, remonstrate, resign, reveal)</p> <p>If w/d, then no duty to disclose</p> <p>Criminal: atty must inform court if cannot dissuade client fr false testimony</p>	<p><b>apprch and cannot reveal (4 R's not req'd)</b></p>	<p>to prevent prospective criminal act</p>
Ending Relationship	<p>1.3: ends when parties agree of matters resolved</p> <p>1.6: <u>Permissive w/d</u> w/ court approval if no material adverse effect &amp; good cause (i.e. client perpetuates fraud/crime, fundamental disagreement w/ client, client does not meet oblig, unreas burden on atty, <b>etc</b>)</p> <p>1.16: <u>Mandatory W/D</u> if violate rules, atty's impairment, or fired (at any time if billed paid)</p> <p>Cannot take client if leaving law firm</p>	<p>CA can force rep, even if unpaid (!)</p> <p><b>3-700: <u>Permissive W/D</u></b>  <b>Same w/d rules XCPT must meet specified conditions:</b></p> <ul style="list-style-type: none"> <li>• <b>fraudulent claim</b></li> <li>• <b>illegal conduct</b></li> <li>• <b>act ineffctively</b></li> <li>• <b>agnst good judgment</b></li> <li>• <b>breach A/C agrmt</b></li> <li>• <b>can't work w/ co-atty</b></li> <li>• <b>atty impaired</b></li> <li>• <b>client agrees to w/d</b></li> </ul> <p><b>NO "good cause" catch-all</b></p> <p><u>Mandatory W/D</u>  No prob cause, violate rules, or atty impairment AND if atty knows claim is frivolous  Quantum meruit = have rt to reas value of svc  Must return papers &amp; unearned fee (unless permitted by law)</p>	