Proposed New Ethics Rules: What You Need to Know

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Introduction

The California State Bar recently submitted seventy proposed new and amended Rules of Professional Conduct to the California Supreme Court for approval.[1] If approved, these proposed Rules would replace the forty-six Rules of Professional Conduct that currently govern the conduct of attorneys in California.[2] Several of the proposed Rules would implement controversial or important changes to the current Rules or impose new obligations in California. As a result, all attorneys in the State should be aware of these proposed changes.

The Rules of Professional Conduct apply to all attorneys licensed in California. Failure to comply with them may result in discipline, including being disbarred from the practice of law.[3] Failure to comply in a litigation matter may also result in disqualification from that matter.

California is currently the only state with its own unique set of rules of professional conduct. All other states have professional conduct rules that are based on the Model Rules developed by the American Bar Association.[4] The last comprehensive revision of the Rules in California was submitted to the California Supreme Court in 1987 and became operative in 1989. Since then, numerous changes have influenced the practice of law—including technological advances, multijurisdictional practices, and a focus more on the practice of law as a business—all with potential ethical implications.

In 2001 and 2002, the Model Rules were revised, which prompted the State Bar Board of Governors to appoint a Commission for the Revision of the Rules of Professional Conduct (the "Predecessor Commission") to do a comprehensive review of the Rules. However, after more than a decade of work by the Predecessor Commission, in 2014 the California Supreme Court granted the State Bar's request to restart the effort. A second commission (the "Commission") was appointed in January 2015. It began an expedited process with the goal of submitting proposed Rules by the end of March 2017. The Commission carefully reviewed the Rules and related law, compared the Rules against the Model Rules, and examined how the Model Rules had been adopted and interpreted in other jurisdictions. After soliciting public comment, the Commission presented a set of proposed Rules to the State Bar Board of Trustees, which then submitted them to the California Supreme Court before the March 31, 2017, deadline.

One of the most significant (although non-substantive) changes reflected in the proposed Rules is to their numbering scheme. The Commission determined that the Rules should generally conform to the organization and rule numbering of the Model Rules. This change allows for easier comparison and review across various jurisdictions.

This article highlights a number of the proposed Rules that would implement material changes from the current regulatory scheme—"material" due to substantive changes in the law, potentially disruptive compliance issues, or public policy and enforceability considerations. It is important to note, however, that this article is not a

comprehensive review of all of the changes reflected in all of the proposed Rules. Also, the proposed Rules discussed herein are not effective, and will not become effective, unless and until approved by the California Supreme Court.

Controversial or Potentially Disruptive Changes

The following three rules are noteworthy in that the changes they propose are controversial or potentially disruptive.

Sexual Relations with Current Client. Our current Rule of Professional Conduct 3-120 effectively permits a lawyer to engage in "sexual relations" (as defined in the Rule) with a client, provided that the lawyer does not:

1. Require or demand sexual relations with a client incident to or as a condition of any professional representation;
2. Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or
3. Continue representation of a client with whom the [lawyer] has sexual relations if such sexual relations cause the member to perform legal services incompetently in violation of rule 3-110 [Failing to Act Competently]."

In contrast, most other jurisdictions have adopted a version of Model Rule 1.8(j), which imposes a bright-line standard that generally prohibits all sexual relations between a lawyer and client unless the sexual relationship was consensual and existed at the time the lawyer-client relationship commenced.

Proposed Rule 1.8.10 reflects a major shift from current Rule 3-120 and substantially adopts the bright-line prohibition approach of Model Rule 1.8(j). It would provide:

"A lawyer shall not engage in sexual relations with a current client who is not the lawyer's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced."[5]

This proposed change has been very controversial, and attracted much commentary both during the public review process and in the press. The Commission itself recognized that the change represents a significant departure from California's current Rule and may implicate important privacy concerns. The members of the Commission, however, concluded that the current Rule has not worked as intended, as evidenced by the fact that, in the twenty-five years since the adoption of Rule 3-120, there have been virtually no successful disciplinary prosecutions under the Rule as currently formulated.

Prohibited Discrimination, Harassment, and Retaliation. Proposed Rule 8.4.1, like current Rule 2-400 (which it would replace), would prohibit unlawful discrimination, harassment, and retaliation in connection with the representation of a client, the termination or refusal to accept the representation of any client, and law firm operations. However, Rule 8.4.1 reflects a fundamental change from Rule 2-400. Proposed Rule 8.4.1 would eliminate the current requirement that there be a final civil determination of such unlawful conduct before a disciplinary investigation can commence or discipline can be imposed.[6]

The current Rule requires a prior adjudication by a tribunal of competent jurisdiction (*i.e.*, not the State Bar Court):

"No disciplinary investigation or proceeding may be initiated by the State Bar against a member under this rule unless and until a tribunal of competent jurisdiction . . . shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred."[7]

A majority of Commission members believed that the prior adjudication requirement renders the current Rule difficult to enforce. The Commission cited to the fact that there does not appear to ever have been discipline imposed under the current Rule. Further, no other California Rule contains a similar limitation on the State Bar Court's original jurisdiction.

Proposed Rule 8.4.1 was one of the more controversial rules being proposed by the Commission. In fact, the State Bar's Board of Trustees, when considering the Commission's proposal, mandated on its own initiative that an alternative version of this rule be sent out for public comment. That was the only rule as to which the Board of Trustees took such action. And in its final vote on the proposal, the Board of Trustees was evenly split 6 to 6, with the State Bar President breaking the tie in favor of the version of the rule proposed by the Commission.

Some of the primary concerns raised by the elimination of the prior adjudication requirement include the following: First, that aggrieved clients and employees may file State Bar complaints without concern for the negative consequences typically associated with filing complaints in litigation, such as being subject to claims for

malicious prosecution or attorneys' fees. Second, the State Bar Court is not properly experienced or staffed to become the forum of first resort for a victim of discriminatory, harassing, or retaliatory conduct committed by a lawyer. And, third, the disciplinary process before the State Bar Court does not provide the same due process protections to lawyers accused of such conduct as does a tribunal of competent jurisdiction. For example, lawyers are afforded limited discovery in matters before the State Bar Court. On the other hand, the deficiencies identified above in the current Rule with respect to enforceability led several Commission members, as well as members of the public (as reflected in public commentary), to view the current Rule as discriminatory in and of itself.

In response to public concerns regarding the elimination of the prior adjudication requirement, the Commission modified the proposed Rule to impose a self-reporting obligation on a lawyer who receives notice of disciplinary charges for violating the Rule. This modification would require the lawyer to provide a copy of a notice of disciplinary charges pursuant to proposed Rule 8.4.1 to the California Department of Fair Employment and Housing, the United States Department of Justice, Coordination and Review Section, or to the United States Equal Employment Opportunity Commission, as applicable.[8] The purpose of this modification is to provide the relevant governmental agencies an opportunity to become involved in the matter so that they may implement and advance the broad legislative policies with which they have been charged. Further, a comment to the proposed Rule clarifies that it would not affect the State Bar Court's discretion in abating a disciplinary investigation or proceeding in the event that parallel administrative or judicial proceedings arise from the same lawyer misconduct allegations,[9] thus giving a tribunal of competent jurisdiction an opportunity to adjudicate the matter before the State Bar Court takes action.

Safekeeping Funds and Property of Clients and Other Persons. Current Rule 4-100 requires that all funds received or held by a lawyer or law firm for the benefit of clients, "including advances for costs and expenses," be deposited into a client trust account. Such funds also include settlement payments and other funds received from third parties. However, while best practices may dictate otherwise, the current Rule does not require the lawyer or law firm to deposit advance fee retainers or deposits into a client trust account. Such payments are not currently required to be segregated from the lawyer's or law firm's funds and may be deposited into a firm operating account.

The permissive nature of current Rule 4-100 has led many lawyers and law firms to simply deposit all such fees into their operating accounts, some due to the operational needs of the type of practice at issue. In fact, lawyers in certain practice areas have not even needed to maintain a trust account due to the nature of their practices. This will change under proposed Rule 1.15, which, by changing "including advances for costs and expenses" to "including advances for *fees*, costs and expenses" (emphasis added), would mandate that advances for legal fees be deposited into a client trust account.[10]

Similar to current Rule 4-100, proposed Rule 1.15 would apply to funds "received or held" by a lawyer or law firm and would require that the bank account into which funds are deposited be "maintained in the State of California" (subject to a limited exception).[11] However, because of the proposed Rule's formulation, it would essentially be given retroactive effect.[12] As a result, the addition of a simple four-letter word to the Rule may cause material disruption to practitioners. First, because the Rule is not just prospective but applies to funds "held" by a lawyer or law firm for the benefit of a client, funds—including fee retainers received *prior* to the enactment of the Rule and deposited into the firm's operating account—would have to be identified, traced, and transferred into a trust account. Second, because the trust account must be maintained in California, firms that are based outside of the state or otherwise maintain their banking relationships outside of the state would be required to establish new banking relationships within California.

It is important to note that the requirement to deposit advanced fees into a trust account would not apply to a "true retainer," which is defined in proposed Rule 1.5 as "a fee that a client pays to a lawyer to ensure the lawyer's availability to the client during a specified period or on a specified matter." Such a fee is earned upon receipt and is not compensation for legal services to be performed in the future, and as such may be deposited directly into a firm's operating account.

Similarly, proposed Rule 1.15 permits an attorney to deposit a flat fee paid in advance for legal services into an operating account, but only if the he or she discloses to the client in writing that (i) the client has a right to require that the flat fee be deposited into a trust account

until the fee is earned and (ii) the client is entitled to a refund of any unearned amount of the fee in the event the representation is terminated or the services for which the fee has been paid are not completed. Also, if the flat fee exceeds $1,000, the client must consent in writing.[13]

Other Important Changes Attorneys Should Know

While not as controversial or potentially disruptive as the foregoing proposed Rules, California attorneys should be aware of the following four proposed important changes to our current Rules.

Advising or Assisting the Violation of Law. Proposed Rule 1.2.1 provides that a "lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows is criminal, fraudulent, or a violation of any law, rule, or ruling of a tribunal." Rule 1.2.1 carries forward the substance of our current Rule 3-210, but proposed new Comment [6] clarifies that a lawyer may counsel a client in the client's compliance with a state law that conflicts with federal law.[14]

The addition of Comment [6] apparently was intended to provide some clarity on the provision of legal services to medical marijuana dispensaries, which are not permitted under federal law, but generally are lawful in California. Because of the absence of language similar to Comment [6] in current Rule 3-210, it might be read to preclude advising clients with respect to such issues, although there are two ethics opinions that have concluded otherwise.[15]

Communication with Clients. Current Rule 3-500 articulates a broad requirement that is likely intuitive to most practitioners: Lawyers must keep their clients "reasonably informed about significant developments relating to the representation." However, the current Rule provides little guidance as to precisely what and how much information lawyers must share.

Proposed Rule 1.4 is generally consistent with Rule 3-500, but it adds clarifying language from the corresponding Model Rule that has been adopted by most other states. This language is intended to enhance public protection by more clearly stating a lawyer's obligations to clients with regard to communication.

Proposed Rule 1.4 would require that lawyers to promptly inform their clients of any decision or circumstance with respect to which disclosure or the client's informed consent is required by the Rules, and advise the client of any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance that may not be permitted under the Rules. As a result, lawyers must not only inform clients as to what they will do, they must also advise clients as to what they *cannot* do.

Rule 1.4 would provide that a lawyer must explain matters to the extent reasonably necessary for clients to make informed decisions regarding the representation, and would also require that a lawyer reasonably consult with the client about the means employed to accomplish the client's objectives. Combined, these obligations help to ensure that the client understands the information conveyed and is empowered to be an active participant in the matter.

Conflicts of Interest: Current Clients. Current Rule 3-310 governs an attorney's conflicts of interest involving current clients. The provisions of the Rule are viewed as taking a "checklist" approach to identifying conflicts because they describe discrete situations that might arise in representations that trigger a duty to provide written disclosure to a client or obtain a client's informed written consent before continuing the representation. For example, a conflict of interest might exist when a lawyer has a relationship with a party or witness in the case, or where a lawyer has a financial interest in the subject matter of the representation.[16]

Proposed Rule 1.7 would replace the current "checklist" approach with generalized standards that follow the Model Rule approach to current client conflicts. Under this new approach, the assessment of whether a conflict is present involves simply asking whether there is either direct adversity "to another current client in the same or a separate matter" or "a significant risk that the lawyer's representation of a current client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client, or by the lawyer's own interests."

As is the case under Rule 3-310, Rule 1.7 provides that, if such a conflict of interest exists, the lawyer cannot proceed with the conflicted representation without informed written consent from each affected client.

Organization as Client. Both proposed Rule 1.13 and current Rule 3-600 make clear that, in representing an organization, the client is the organization itself, and not its directors, officers, employees, or other constituents. As an entity, the organization can only act through its authorized officers, employees and other individuals, and such individuals are not the "client" even though the

lawyer may take direction from such persons. Proposed Rule 1.13, however, would substantively change Rule 3-600:

First, current Rule 3-600 permits a lawyer to refer a matter to a higher authority within the organization under certain circumstances, including when the lawyer becomes aware that a constituent of the organization is acting, or intends to act, in a manner that either may be a violation of the law imputable to the organization or is likely to result in substantial injury to the organization. Such an action by the lawyer is often referred to as "reporting up the corporate ladder." Proposed Rule 1.13 would *mandate* reporting up in certain circumstances. This mandate is consistent with the ABA Model Rule and the rules of many other states, but it diverges from current Rule 3-600 which *permits*, but does not *require*, a lawyer to take such action.[17]

Second, while the circumstances that trigger reporting up the corporate ladder under Rule 3-600 are based on the lawyer's actual knowledge, a lawyer's duty to report under proposed Rule 1.13 would be triggered by two separate scienter standards: (1) a subjective standard that would require actual knowledge by the lawyer that a constituent is acting, intends to act, or refuses to act; and (2) an objective standard that asks whether the lawyer knows or reasonably should know that the constituent's actions would be (a) a violation of either a legal duty to the organization or law reasonably imputable to the organization, and (b) likely to result in substantial injury to the organization.

Third, unlike Rule 3-600, which permits a lawyer to take corrective action if there is *either* a violation of law or likely to be substantial injury to the organization, Rule 1.13 would require that *both* exist before a lawyer's duty to report up the corporate ladder is triggered.

Fourth, under Rule 1.13, a lawyer would be required to notify the highest authority in the organization if the lawyer has been discharged or forced to withdraw as a result of his or her "reporting up" obligation. No such notification is required by current Rule 3-600.

Entirely New Rules

The following seven Rules would be new to California.

Imputation of Conflicts of Interest: General Rule. Proposed Rule 1.10 represents an important development for California lawyers. The proposed Rule sets forth the noncontroversial concept that, subject to certain limited exceptions, the conflicts of interest of an attorney in a law firm may be imputed to all attorneys in the firm:

"While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by [the conflict of interest] rules."

The proposed Rule goes further and establishes, for the first time in the Rules, an acknowledgment that ethical screens may be effective in limited circumstances to cure what would otherwise be an imputed conflict of interest. Ethical screens are not sanctioned in the current Rules, although there is support for their effectiveness in case law.[18] Such cases typically involve disqualification of conflicted counsel. The proposed Rule would clarify that the use of ethical screens may mitigate against discipline under the Rules, although the circumstances where an ethical screen may be utilized are limited to those specified in the Rule.[19]

Duties to Prospective Clients. Proposed Rule 1.18 would impose duties upon lawyers relating to consultations with a prospective client—i.e., a "person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal services or advice from the lawyer in the lawyer's professional capacity."[20] In particular, lawyers would be obligated to preserve the confidentiality of information acquired during a consultation prior to the establishment of an attorney-client relationship. Even if no attorney-client relationship is established, under this Rule a lawyer is prohibited from using or revealing confidential information learned as a result of the consultation.

Although concepts articulated in this Rule are already the law in California and would not establish new standards,[21] the Commission acknowledged the importance of including these concepts in the Rules to alert lawyers to this important duty and provide them with guidance on how to comport themselves during a consultation through a clearly-articulated disciplinary standard.

The proposed Rule would further prohibit a lawyer from representing a client with interests adverse to those of the prospective client in the same or substantially related subject matter, absent informed written consent from the prospective client, if the lawyer has obtained confidential information material to the matter.

The prohibition in this Rule would be imputed to the lawyer's law firm so that no lawyer at the firm may knowingly undertake or continue representation in such

a matter unless he or she is properly screened from participation in the matter.

Truthfulness in Statements to Others. It has long been recognized in California that attorneys may be disciplined for intentionally deceiving a tribunal or opposing counsel, and that attorneys may be civilly liable to a third party for making false statements of material fact on behalf of a client. Further, our Business & Professions Code provides that attorneys may be disciplined for committing acts involving "moral turpitude, dishonesty or corruption."[22]

Proposed Rule 4.1 would prohibit lawyers, in the course of representing a client, from "knowingly" making a "false statement of material fact or law to a third person," or failing to disclose to a third person a material fact necessary to avoid assisting in a client's criminal or fraudulent conduct. This reflects an important change by expressly including in the Rules a disciplinary standard for misrepresentations to third parties. Further, it differs from the legal standard applicable to civil liability for fraudulent representation, as a violation does not require proof of either reliance or damages.

Duties Concerning Inadvertently Transmitted Writings. There is no current Rule addressing a lawyer's duties to third persons when presented with inadvertent disclosure of privileged materials. Proposed Rule 4.4 provides:

"Where it is reasonably apparent to a lawyer who receives a writing relating to a lawyer's representation of a client that the writing was inadvertently sent or produced, and the lawyer knows or reasonably should know that the writing is privileged or subject to the work product doctrine, the lawyer shall: (a) refrain from examining the writing any more than is necessary to determine that it is privileged or subject to the work product doctrine, and (b) promptly notify the sender."

While the proposed Rule is consistent with California case law,[23] the Commission concluded that adopting it would help protect the public and the administration of justice, as well as inform attorneys of their ethical obligations. Consistent with such case law, Comment [1] to the Rule provides the lawyer with the following options when he or she determines that the Rule applies to a transmitted writing: "the lawyer should return the writing to the sender, seek to reach agreement with the sender regarding the disposition of the writing, or seek guidance from a tribunal."

Responsibilities of Managerial & Supervisory Lawyers, of a Subordinate Lawyer and Regarding Nonlawyer Assistants. The only reference to a lawyer's duty to supervise subordinates is contained in a comment to current Rule 3-110 (Failing to Act Competently): "The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents." Proposed Rules 5.1, 5.2 and 5.3 would detail what that duty to supervise requires.

Proposed Rule 5.1 would provide that lawyers who manage law firms, both individually and collectively, "shall make reasonable efforts to assure that all lawyers in the firm comply" with the Rules. Rule 5.1 also requires lawyers who supervise other lawyers, whether or not a member or an employee of the same law firm, to make similar "reasonable efforts to ensure compliance by the lawyer supervised."

Under the proposed Rule, a lawyer will be vicariously responsible for another lawyer's violation of the Rules 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."

Consistent with California case law,[24] Proposed Rule 5.2 makes it clear that, notwithstanding the vicarious responsibility imposed on a managing or supervising lawyer by Rule 5.1, a subordinate lawyer has an independent duty to comply with the Rules. The Rule further provides that "[i]f the subordinate lawyer believes that the supervisor's proposed resolution of the question of professional duty would result in a violation of these rules or the State Bar Act, the subordinate is obligated to communicate his or her professional judgment regarding the matter to the supervisory lawyer."[25]

Proposed Rule 5.3 would hold lawyers similarly responsible for non-lawyer employees. Managerial and supervisory lawyers must make reasonable efforts to ensure that the conduct of the non-lawyers they supervise is compatible with the professional obligations of the lawyer.

The proposed changes and additions to the Rules of Professional Conduct, including those described above,

have been submitted to the California Supreme Court for approval. All attorneys in the State will be subject to such Rules when and if approved by the Court.

Endnotes

1 The proposed Rules of Professional Conduct can be found at http://www.calbar.ca.gov/Portals/0/documents/ethics/Proposed-Rules-of-Professional-Conduct.pdf.

2 The current Rules of Professional Conduct can be found at http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules.

3 *See* current Rule 1-100, paragraph (A); proposed Rule 8.5, paragraph (a) [Disciplinary Authority].

4 The Model Rules can be found at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.

5 Proposed Rule 1.8.10, paragraph (a). The proposed prohibition carries forward the exceptions in current Rule 3-120 for spousal and preexisting sexual relationships. Also, under this Rule (both current and proposed), when the client is an organization, the person overseeing the representation is considered to be the client. Current Rule 3-120, Discussion; Proposed Rule 1.8.10, Comment [2].

6 In addition, Proposed Rule 8.4.1 would expand the scope of current Rule 2-400, which only applies to "the management or operation of a law practice," and also does not expressly cover retaliation.

7 Current Rule 2-400 (C).

8 Rule 8.4.1 (e).

9 Rule 8.4.1, Comment [7].

10 Rule 1.15, Comment [2], defines "advances for fees" as "a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client's behalf."

11 Rule 1.15 (a) ["or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction."].

12 Although in its submission to the California Supreme Court the State Bar has requested that the Rules not become effective for at least 180 days after approval (so to allow the State Bar sufficient time to notify and educate lawyers, judges, and the public about the changes implemented by the new Rules), as currently worded proposed Rule 1.15 would still apply to "held" funds.

13 Rule 1.15 (b).

14 Comment [6] provides as follows: "*Paragraph (b) permits a lawyer to advise a client regarding the validity, scope, and meaning of California laws that might conflict with federal or tribal law*, and, despite such a conflict, to assist a client in conduct that the lawyer reasonably believes is permitted by California statutes, regulations, orders, and other state or local provisions implementing those laws. If California law conflicts with federal or tribal law, the lawyer should also advise the client regarding related federal or tribal law and policy." [italics added]

15 Rule 3-210 provides: "A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal." *But see* Los Angeles County Bar Association Opinion No. 527 (August 12, 2015) ["A member may advise and assist a client regarding compliance with California's marijuana laws provided that the member does not advise the client to violate federal law or assist the client in violating federal law in a manner that would enable the client to evade arrest or prosecution for violation of the federal law."]; San Francisco Bar Association Opinion No. 2015-1 (June 2015) ["A California attorney may ethically represent a California client in respect to lawfully forming and operating a medical marijuana dispensary and related matters permissible under state law, even though the attorney may thereby aid and abet violations of federal law."].

16 Rule 3-310(B) provides: "A member shall not accept or continue representation of a client without providing written disclosure to the client where: (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; […] or (4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation."

17 Proposed Rule 1.13 would carry forward the requirement in Rule 3-600 that a lawyer must maintain his or her duty of confidentiality when taking action pursuant to the Rule. In particular, it is important to note that, while lawyers may be permitted or obligated to report misconduct up the corporate ladder, they are generally precluded by their duty of confidentiality from "reporting out" such misconduct (e.g., to a regulatory body or prosecutor).

18 *See, e.g., Kirk v. First American Title Insurance Co.*, 183 Cal. App. 4th 776 (2010).

19 Rule 1.10, paragraph (a): "While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9, unless (1) the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or (2) the prohibition is based upon rule 1.9(a) or (b) and arises out of the prohibited lawyer's association with a prior firm, and (i) the prohibited lawyer did not substantially participate in the same or a substantially related matter; (ii) the prohibited lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (iii) written notice is promptly given to any affected former client […]."

20 Proposed Rule 1.18, Paragraph (a).

21 *See, e.g.,* Cal. Evid. Code § 951 and Cal. Bus. & Prof. Code § 6068(e).

22 Cal. Bus. & Prof. Code § 6106: "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

23 *See, e.g., Rico v. Mitsubishi*, 42 Cal. 4th 807, 817 (2007).

24 *See, e.g., Jay v. Mahaffey*, 218 Cal. App. 4th 1522 (2013); *In re* Aguilar, 34 Cal. 4th 386 (2004).

25 Proposed Rule 5.2, Comment.