

California's New Rules of Professional Conduct
For Trust & Estate Lawyers

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INTRODUCTION

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CRPC 1.0.1 TERMINOLOGY

- Definition of terms applying to all rules:
 - Identifies standards ("know," "reasonable," etc.)
 - Clarifies conduct covered ("fraud")
 - Relevant entities or processes ("law firm," "tribunal," "screened")
 - Explains scope of common terms ("partner," "person")

* * *

- Asterisks
- Also defined terms other specific rules

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CRPC 1.0.1(e) & (e)(1) – “Informed Consent” & “Informed Written Consent”

- (e) “Informed consent” ~~denotes the~~ means a person’s* agreement ~~by a person~~ to a proposed course of conduct after the lawyer has communicated adequate information and explanation ~~about~~ and explained (i) the relevant circumstances and (ii) the material risks ~~of~~, including any actual and reasonably available alternatives to foreseeable adverse consequences of the proposed course of conduct.
- (e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.

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CRPC 1.0.1(f) & (j) – “Knows,” etc. & “Reasonably Should Know,” etc.

- (f) “Knowingly,” “known,” or “knows” ~~denotes~~ means actual knowledge of the fact in question. A person’s* knowledge may be inferred from circumstances.
- (j) “Reasonably should know” when used in reference to a lawyer ~~denotes~~ means that a lawyer of reasonable prudence and competence would ascertain the matter in question.

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CRPC 1.0.1(a), (h) & (i) – “Belief,” etc., “Reasonable,” etc. & “Reasonable Belief”

- (a) “Belief” or “believes” ~~denotes~~ means that the person* involved actually ~~supposed~~ supposes the fact in question to be true. A person’s* belief may be inferred from circumstances.
- (h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer ~~denotes~~ means the conduct of a reasonably prudent and competent lawyer.
- (i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer ~~denotes~~ means that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

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CRPC 1.0.1(g-1) – “Person”

- (g-1) “Person” has the meaning stated in Evidence Code section 175.
- **Evid. Code § 175:** “Person” includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.

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CRPC 1.0.1(n) – “Writing,” etc. & “Signed” Writing

- (n) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and electronic communications. **has the meaning stated in Evidence Code section 250.** A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, **inserted,** or adopted by **or at the direction of** a person² with the intent to sign the writing.
- **Evidence Code § 250:** “Writing” means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

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**CHAPTER 1.
LAWYER-CLIENT RELATIONSHIP**

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CRPC 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY

- Reasonably* consult
- Client – Substantive
- Lawyer – Procedural/strategy/implied authority
- Scope
- Representation ≠ endorsement
- Rule 1.2.1

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CRPC 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY

(a) Subject to ~~paragraphs (c) and (d)~~, rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ~~Rule rule~~ Rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. A Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. ~~In~~ Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

~~(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.~~

~~(c)~~(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

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CRPC 1.4 COMMUNICATION WITH CLIENTS

- Promptly inform
 - Disclosure/informed consent
- Reasonably consult – means/objectives
- Significant developments/significant documents
- Limitations on lawyer's conduct
- Explain → Informed Decision
- Delay
- Non-disclosure

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CRPC 1.4 COMMUNICATION WITH CLIENTS – Para. (a)

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which ~~disclosure or the client's informed consent, as defined in Rule 1.0(e),~~ is required by these ~~Rules rules or the State Bar Act~~;

(2) reasonably* consult with the client about the means by which to accomplish the client's objectives are to be accomplished in the representation;

(3) keep the client reasonably* informed about ~~the status of the matter;~~

(4) significant developments relating to the representation, including promptly ~~comply~~ complying with reasonable* requests for information; and copies of significant documents when necessary to keep the client so informed; and

~~(5)(4) consult with~~ advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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CRPC 1.4 COMMUNICATION WITH CLIENTS – Paras. (b) – (d)

(b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.

(d) A lawyer's obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

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DUTY OF CONFIDENTIALITY

- Bus. & Prof. C. § 6068(e)
- Evidence Code §§ 950 et seq.
- Attorney-client **privilege vs. duty** of confidentiality
- CRPC 1.6 – Disclosure of **current** client's confidential information
- CRPC 1.8.2 – Use of **current** client's confidential information
- CRPC 1.9(c):
 - (c)(1) – Use of **former** client's confidential information
 - (c)(2) – Disclosure of **former** client's confidential information

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BUS. & PROF. CODE § 6068(e) – CONFIDENTIALITY

It is the duty of an attorney to do all of the following:

* * *

(e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

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CRPC 1.6 CONFIDENTIAL INFORMATION OF A CLIENT

- Former **CRPC 3-100** – “shall not *reveal*”
- **Bus. & Prof. C. § 6068(e)**
- Attorney-client privilege vs. duty of confidentiality
- Client’s informed consent [(a)]
- [“Impliedly authorized”]
- Single express exception for life-threatening criminal act [(b)]
- Before revealing information to prevent life-threatening criminal act:
 - Must inform client of ability or decision
 - Must attempt to persuade client [(c)]
- Compare ABA Model Rule 1.6 exceptions [**MR 1.6(b)(1) – (7)**]
- California attorney-client privilege statute [**Evid.C. §§ 950 ff. & case law**]

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CRPC 1.6(a) & (b) – Compared to ABA Model Rule 1.6(a) & (b)

(a) A lawyer shall not reveal information relating to the representation of a client protected from disclosure by **Business and Professions Code section 6068, subdivision (e)(1)** unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation,* or the disclosure is permitted by paragraph (b) of this rule.

(b) A lawyer may, **but is not required to**, reveal information relating to the representation of a client protected by **Business and Professions Code section 6068, subdivision (e)(1)** to the extent that the lawyer reasonably believes* the disclosure is necessary:

(1) to prevent a **criminal act** that the lawyer reasonably **certains** **believes*** is likely to result in death of, or substantial* bodily harm; to an individual, **as provided in paragraph (c).**

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CRPC 1.6(b) – Compared to ABA Model Rule 1.6(b)(2) – (7) & (c)

- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - (4) to secure legal advice about the lawyer's compliance with these Rules;
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - (6) to comply with other law or a court order; or
 - (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

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CRPC 1.6(c) & (d) – Duties to Consulting Client About Disclosure; Limitations

- (c) Before revealing information protected by Business and Professions Code section 6068, subdivision (e)(1) to prevent a criminal act as provided in paragraph (b), a lawyer shall, **if reasonable* under the circumstances:**
- (1) make a good faith effort to **persuade** the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial* bodily harm; or do both (i) and (ii); and
 - (2) **inform** the client, at an appropriate time, of the lawyer's ability or decision to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) as provided in paragraph (b).
- (d) In revealing information protected by Business and Professions Code section 6068, subdivision (e)(1) as provided in paragraph (b), the lawyer's disclosure must be **no more than is necessary to prevent the criminal act**, given the information known* to the lawyer at the time of the disclosure.

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PROPOSED CRPC 1.14 CLIENT WITH DIMINISHED CAPACITY – REJECTED

- Duties owed client with diminished capacity
- Taking "protective action" – when permitted
- Obtaining consent to take "protective action"
- **Advanced** "informed written consent"
- Restrictions on Lawyer's actions
- "Protective action" definition
- Effect of lawyer not taking "protective action"

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PROPOSED CRPC 1.14 – CLIENT WITH DIMINISHED CAPACITY – Para. (a)
Compared to ABA Model Rule 1.14

(a) **Duties Owed Client with Diminished Capacity.** When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably* possible, maintain a normal lawyer-client relationship with the client.

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PROPOSED CRPC 1.14 – Para. (b) – Slide #1

(b) Taking Protective Action on Behalf of a Client With Significantly Diminished Capacity.

(1) Except where the lawyer represents a minor, a client in a criminal matter, or a client who is the subject of a conservatorship proceeding or who has a guardian ad litem or other person* legally entitled to act for the client, the lawyer may, but is not required to take protective action, provided the lawyer has obtained the client’s consent as provided in paragraph (c) or (d), and the lawyer reasonably believes* that:

- (i) there is a significant risk that the client will suffer substantial* physical, psychological, or financial harm unless protective action is taken,
- (ii) the client has significantly diminished capacity such that the client is unable to understand and make adequately considered decisions regarding the potential harm, and
- (iii) the client cannot adequately act in the client’s own interest.

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PROPOSED CRPC 1.14 – Para. (b) – Slide #2

(b) Taking Protective Action on Behalf of a Client With Significantly Diminished Capacity.

* * *

(2) Information relating to the client’s diminished capacity is protected by Business and Professions Code § 6068(e)(1) and Rule 1.6. In taking protective action as authorized by this paragraph, the lawyer must:

- (i) act in the client’s best interest, and
- (ii) disclose no more information than is reasonably* necessary to protect the client from substantial* physical, psychological, or financial harm, given the information known* to the lawyer at the time of disclosure.

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PROPOSED CRPC 1.14 – Para. (c) – Slide #1

(c) Obtaining Consent To Take Protective Action.

- (1) Before taking protective action as authorized by paragraph (b), a lawyer must take all steps reasonably* necessary to preserve client confidentiality and decision-making authority, which includes:
 - (i) explaining to the client the need to take protective action, and
 - (ii) obtaining the client’s consent to take the protective action.

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PROPOSED CRPC 1.14 – Para. (c) – Slide #2

(c) Obtaining Consent To Take Protective Action.

* * *

- (2) In seeking the consent of a client to take protective action under paragraph (b), the lawyer may obtain the assistance of an appropriate person* to assist the lawyer in communicating with the client. In obtaining such assistance, the lawyer must:
 - (i) act in the client’s best interest;
 - (ii) disclose no more information than is reasonably* necessary to protect the client from substantial* physical, psychological, or financial harm, given the information known* to the lawyer at the time of disclosure; and
 - (iii) take all reasonable* steps to ensure that the information disclosed remains confidential.

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PROPOSED CRPC 1.14 – Para. (d)

(d) Obtaining Advance Informed Written Consent* to Take Protective Action. A lawyer may obtain a client’s advance informed written consent* to take protective action in the event the circumstances set forth in paragraphs (b)(1)(i) – (iii) should later occur. The advance consent must be in a separate writing* signed by the client and must include the following written* disclosures:

- (1) the authorization to take protective action is valid only when the lawyer reasonably believes* that the circumstances set forth in (b)(1)(i) – (iii) are present; and
- (2) the client retains the right to revoke or modify the advance consent at any time.

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PROPOSED CRPC 1.14 – Para. (e)

(e) Restrictions on Lawyer’s Actions. This Rule does not authorize the lawyer to take:

- (1) any action that is adverse to the client, including the filing of a conservatorship petition or other similar action;
- (2) any action on behalf of a person* other than the client that the lawyer would not be permitted to take under Rule 1.7 or 1.9; or
- (3) any action that would violate the client’s right to due process of law under the United States or California Constitutions, or the California Probate Code.

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PROPOSED CRPC 1.14 – CLIENT WITH DIMINISHED CAPACITY – Paras. (f) & (g)

(f) Definitions. For purposes of this Rule:

- (1) “Protective action” means to take action to protect the client’s interests by:
 - (i) notifying an individual or organization that has the ability to take action to protect the client, or
 - (ii) seeking to have a guardian ad litem appointed.

(g) Discipline. A lawyer who does not take protective action as permitted by paragraph (b) does not violate this Rule.

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CRPC 1.5 FEES FOR LEGAL SERVICES

- Standard: “unconscionable or illegal” [CRPC 1.5(a)]
- 13 factors [CRPC 1.5(b)].
- Contingent fees in criminal & certain family law matters [CRPC 1.5(c)].
- “Earned on receipt” or “non-refundable,” fees/true retainers [CRPC 1.5(d)].
- Advance flat fees [CRPC 1.5(e)].

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CRPC 1.5 FEES FOR LEGAL SERVICES – Paras. (d) & (e)

(d) A lawyer may make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms, only if the fee is a true retainer and the client agrees in writing* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is 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, but not to any extent as compensation for legal services performed or to be performed.

(e) A lawyer may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the lawyer providing those services.

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CRPC 1.15 SAFEKEEPING FUNDS AND PROPERTY OF CLIENTS AND OTHER PERSONS*

- Trust account in California (written consent)[CRPC 1.15(a)]
- Clients and “other persons” (contractual, statutory, etc. duty) [CRPC 1.15(a)]
- **Deposit advanced fees**, [costs and expenses] [CRPC 1.15(a)]
- **Advanced flat fee** [CRPC 1.15(b)]
- **No commingling** of lawyer funds with trust funds [CRPC 1.15(c)]
- **Notify promptly** when funds/securities/property received. [CRPC 1.15(d)(1)]

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CRPC 1.15 SAFEKEEPING FUNDS AND PROPERTY OF CLIENTS AND OTHER PERSONS*

(a) All funds received or held by a lawyer or law firm* for the benefit of a client, or other person* to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled “Trust Account” or words of similar import, maintained in the State of California, 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.

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CRPC 1.15 SAFEKEEPING FUNDS AND PROPERTY OF CLIENTS AND OTHER PERSONS*

(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer's or law firm's operating account, provided:

(1) the lawyer or law firm* discloses to the client in writing* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed, and

(2) if the flat fee exceeds \$1,000.00, the client's agreement to deposit the flat fee in the lawyer's operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client.

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CRPC 1.15 SAFEKEEPING FUNDS AND PROPERTY OF CLIENTS AND OTHER PERSONS*

- **Label**, identify & safekeep property. [CRPC 1.15(d)(2)]
- **Maintain** detailed records [CRPC 1.15(d)(3), (e) & Standards]
- **Preserve** records for 5 years post distribution. [CRPC 1.5(d)(5); Standards]
- **Account** promptly in writing [CRPC 1.5(d)(4)]
- **Retain** disputed funds/property until resolved. [CRPC 1.15(c)(2), (d)(7)]
- **Distribute** undisputed funds/property [CRPC 1.15(d)(7)]

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CRPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

- "Direct Adversity" [CRPC 1.7(a)]
- "Material Limitation" [CRPC 1.7(b)]
- "Informed Written Consent"
- "Written Disclosure" [CRPC 1.7(c)] – Cf. CRPC 1.0.1(e)
- "Matter" [CRPC 1.7(e)]
- "Non-waivable conflicts" [CRPC 1.7(d)]

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CRPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS – Paras. (a) & (b)

~~(a) Except as provided in paragraph (b), a~~ A lawyer shall not, ~~without informed written consent* from each client and compliance with paragraph (d),~~ represent a client if ~~the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client is directly adverse to another client in the same or a separate matter; or~~

~~(1)(b) A lawyer shall not, without informed written consent* from each affected client and compliance with paragraph (d),~~ represent a client if: (2) there is a significant risk the ~~representation of one or more clients will be~~ lawyer's ~~representation of the client will be~~ materially limited by the lawyer's responsibilities to ~~or relationships with~~ another client, a former client or a third person, ~~or by a personal interest of the lawyer~~ lawyer's own interests.

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CRPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS – Para. (c)

(c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without **written* disclosure** of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyer has, or knows* that another lawyer in the lawyer's firm* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the lawyer knows* or reasonably should know* that another party's lawyer is a spouse, parent, child, or sibling of the lawyer, lives with the lawyer, is a client of the lawyer or another lawyer in the lawyer's firm,* or has an intimate personal relationship with the lawyer.

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CRPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS – Para. (d)

~~(b)(d) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:~~

(1) the lawyer reasonably believes* that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; **and**

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; **and,**

(4) each affected client gives informed consent, confirmed in writing.

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CRPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS – Para. (e)

(e) For purposes of this rule, “matter” includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,* or a discrete and identifiable class of persons.*

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CRPC 1.9 DUTIES TO FORMER CLIENTS

- Successive representation in the same or a substantially related matter [CRPC 1.9(a)]
 - Substantial relationship
- Successive Representation where the lawyer is no longer associated with the firm representing the former client [CRPC 1.9(b)]
 - Modified substantial relationship
- “Informed written consent”
- Using or disclosing former client information [CRPC 1.9(c)]

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CRPC 1.9 DUTIES TO FORMER CLIENTS – Paras. (a) & (b)

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person* in the same or a substantially related matter in which that person’s* interests are materially adverse to the interests of the former client unless the former client gives informed written consent, ~~confirmed in writing.~~*

(b) A lawyer shall not knowingly* represent a person* in the same or a substantially related matter in which a firm* with which the lawyer formerly was associated had previously represented a client

- (1) whose interests are materially adverse to that person;* and
- (2) about whom the lawyer had acquired information protected by Rules Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent, ~~confirmed in writing.~~*

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CRPC 1.9 DUTIES TO FORMER CLIENTS – Para. (c)

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm* has formerly represented a client in a matter shall not thereafter:

(1) use information ~~relating to the~~ protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these ~~Rules~~ rules or the State Bar Act would permit ~~or require~~ with respect to a current client, or when the information has become generally known;* or

(2) reveal information ~~relating to~~ protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client except as these ~~Rules would~~ rules or the State Bar Act permit ~~or require~~ with respect to a current client.

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CRPC 1.8.2 USE OF CURRENT CLIENT'S INFORMATION

- Duty of loyalty to *current* client
 - "Shall not *use*"
 - To client's disadvantage
- **Bus. & Prof. C. § 6068(e)**
- Compare **ABA Model Rule 1.8(b)**
- Compare **CRPC 1.6** ("reveal")
- Compare **CRPC 1.9(c)(1)** ("use" information of *former* client)

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CRPC 1.8.2 USE OF CURRENT CLIENT'S INFORMATION

- A lawyer shall not use a client's information relating to representation of a client protected by Business and Professions Code section 6068, subdivision (e)(1) to the disadvantage of the client unless the client gives informed consent,* except as permitted ~~or required~~ by these ~~Rules~~ rules or the State Bar Act.

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CRPC 1.18 DUTIES TO PROSPECTIVE CLIENT

- Who or what is a "prospective client? [1.18(a)]
- Confidentiality owed to a prospective client [1.18(b)]
- Where the "consulting" lawyer is prohibited from representing a client with interests materially adverse to the prospective client [1.18(c)]
- Avoiding imputation of the prohibited lawyer's conflict to other lawyers in the firm [1.18(d)]

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CRPC 1.18 DUTIES TO PROSPECTIVE CLIENT – Paras. (a) & (b)

(a) A person* who, directly or through an authorized representative, consults with a lawyer about for the possibility purpose of forming a client-retaining the lawyer relationship with respect to a matter or securing legal service or advice from the lawyer in the lawyer's professional capacity, is a prospective client.

(b) Even when no lawyer-client-lawyer relationship ensues, a lawyer who has learned information from a communicated with a prospective client shall not use or reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 that information the lawyer learned as a result of the consultation, except as Rule rule 1.9 would permit with respect to information of a former client.

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CRPC 1.18 DUTIES TO PROSPECTIVE CLIENT – Para. (c)

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 that could be significantly harmful to that person in is material to the matter, except as provided in paragraph (d). If a lawyer is disqualified prohibited from representation under this paragraph, no lawyer in a firm* with which that lawyer is associated may knowingly* undertake or continue representation in such a matter, except as provided in paragraph (d).

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CRPC 1.18 DUTIES TO PROSPECTIVE CLIENT – Para. (d)

(d) When the lawyer has received ~~disqualifying information that prohibits representation as defined provided in paragraph (c), representation of the affected client~~ is permissible if:

(1) ~~both the affected client and the prospective client have given informed written consent, confirmed in writing,* or:~~

(2) ~~the lawyer who received the information took reasonable* measures to avoid exposure to more disqualifying information than was reasonably* necessary to determine whether to represent the prospective client; and~~

(i) ~~the disqualified prohibited lawyer is timely screened* from any participation in the matter and is apportioned no part of the fee therefrom; and~~

(ii) ~~written* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.~~

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CRPC 8.4.1 PROHIBITED DISCRIMINATION, HARASSMENT AND RETALIATION

• *“Former CRPC 2-400”*

- Applies to **representing, terminating or declining** representation, of **client**
- Applies in relation to **operation of law firm**; shall not:
 - Unlawfully discriminate or knowingly permit such discrimination
 - Unlawfully harass or knowingly permit such harassment
 - Unlawfully refuse to hire, employ, train, discriminate in pay, etc.
 - Unlawfully retaliate
- **No prerequisite** of a civil finding or verdict of prohibited conduct.
- If State Bar investigation, etc., must notify Bar of related proceedings
- If State Bar investigation, etc., must notify relevant federal/state agencies
- **Permitted conduct:** (i) representing charged client; (ii) complying with CRPC 1.16; (iii) providing advice/advocacy as required/permitted

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CRPC 1.8.3 GIFTS FROM CLIENT

- Former **CRPC 4-400**
- Prohibits:
 - Soliciting substantial gift – including testamentary gift
 - **Preparing instrument conveying gift to lawyer or related person (Probate Code)**
- **Related = blood or affinity (close familial relationship)**
- General standards of fairness & absence of undue influence

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CRPC 1.8.3 GIFTS FROM CLIENT – Compared to ABA Model Rule 1.8(c)

~~(e)(a)~~ A lawyer shall not:

(1) solicit ~~any a client to make a substantial* gift from a client,~~ including a testamentary gift, ~~or to the lawyer or a person* related to the lawyer, unless the lawyer or other recipient of the gift is related to the client, or~~

(2) prepare on behalf of a client an instrument giving the lawyer or a person* related to the lawyer any substantial* gift, unless (i) the lawyer or other recipient of the gift is related to the client, or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.

(b) For purposes of this ~~paragraph rule,~~ related persons* include a ~~spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.~~ person* who is "related by blood or affinity" as that term is defined in California Probate Code section 21374, subdivision (a).

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**CHAPTER 7.
INFORMATION ABOUT LEGAL
SERVICES**

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CRPC 7.2 ADVERTISING

- Permissible lawyer advertng
- The "advertising standards"
- **Compensating or rewarding a person for recommending or securing services of a lawyer**
- Disclosure of lawyer's name and address

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CRPC 7.2 ADVERTISING – Para. (b) – Slide #1

(b) A lawyer shall not compensate, ~~give or promise or give~~ anything of value to a person* for the purpose of recommending ~~or securing~~ the lawyer's services ~~of the lawyer or the lawyer's law firm,*~~ except that a lawyer may:

- (1) pay the reasonable* costs of advertisements or communications permitted by this ~~Rule rule~~;
- (2) ~~pay~~ the usual charges of a legal ~~service services~~ plan or a ~~not for profit or qualified lawyer referral service~~. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California;
- (3) ~~pay~~ for a law practice in accordance with ~~Rule rule~~ 1.17;
- (4) ~~refer~~ clients to another lawyer or a nonlawyer professional pursuant to an ~~agreement arrangement~~ not otherwise prohibited under these Rules ~~or the State Bar Act~~ that provides for the other person* to refer clients or customers to the lawyer, if:
 - (i) ~~the reciprocal referral agreement arrangement~~ is not exclusive; and
 - (ii) ~~the client is informed of the existence and nature of the agreement, and arrangement;~~

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CRPC 7.2 ADVERTISING – Para. (b) – Slide #2

(b) A lawyer shall not compensate, ~~give or promise or give~~ anything of value to a person* for the purpose of recommending ~~or securing~~ the lawyer's services of the lawyer or the lawyer's law firm,* except that a lawyer may:

* * *

(5) ~~give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services offer or give a gift or gratuity to a person* having made a recommendation resulting in the employment of the lawyer or the lawyer's law firm,* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.~~

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CRPC 8.4.1 PROHIBITED DISCRIMINATION, HARASSMENT AND RETALIATION

- "Former CRPC 2-400"
- Applies to **representing, terminating or declining** representation, of client
- Applies in relation to **operation of law firm**; shall not:
 - Unlawfully discriminate or knowingly permit such discrimination
 - Unlawfully harass or knowingly permit such harassment
 - Unlawfully refuse to hire, employ, train, discriminate in pay, etc.
 - Unlawfully retaliate
- **No prerequisite** of a civil finding or verdict of prohibited conduct.
- If State Bar investigation, etc., must notify Bar of related proceedings
- If State Bar investigation, etc., must notify relevant federal/state agencies
- **Permitted conduct:** (i) representing charged client; (ii) complying with CRPC 1.16; (iii) providing advice/advocacy as required/permitted

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OTHER RULES

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Horizontal lines for notes

CRPC 1.8.9 PURCHASING PROPERTY AT A FORECLOSURE OR A SALE SUBJECT TO JUDICIAL REVIEW
(a) A lawyer shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyer or any lawyer affiliated by reason of personal, business, or professional relationship with that lawyer or with that lawyer's law firm* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.
(b) A lawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm* or is an employee of the lawyer or the lawyer's law firm.*
(c) This rule does not prohibit a lawyer's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

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Horizontal lines for notes

CRPC 1.8.9 PURCHASING PROPERTY AT A FORECLOSURE OR A SALE SUBJECT TO JUDICIAL REVIEW - Comment
A lawyer may lawfully participate in a transaction involving a probate proceeding which concerns a client by following the process described in Probate Code sections 9880-9885. These provisions, which permit what would otherwise be impermissible self-dealing by specific submissions to and approval by the courts, must be strictly followed in order to avoid violation of this rule.

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Horizontal lines for notes

CRPC 1.3 DILIGENCE

- Unwaivable
- “Reasonable diligence”
- Intentional, reckless, gross negligence, repeated
- Diligence defined:
 - Commitment & dedication to client’s interests
 - Must not neglect or disregard, or unduly delay matter

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CRPC 1.3 DILIGENCE

(a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence and promptness in representing a client.

(b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

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CRPC 1.16 [3-700] DECLINING OR TERMINATING REPRESENTATION

- Promptly release
- “Client materials and property”
- Sale of law practice
- Threats to terminate

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CRPC 1.16 [3-700] DECLINING OR TERMINATING REPRESENTATION – Para. (d)

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests. A lawyer shall not terminate a representation until the lawyer has taken reasonable* steps to the extent reasonably practicable to protect a client's interests avoid reasonably* foreseeable prejudice to the rights of the client, such as giving reasonable notice to the client sufficient notice, allowing time for employment of other counsel, to permit the client to retain other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law and complying with paragraph (e).

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CRPC 1.16 [3-700] DECLINING OR TERMINATING REPRESENTATION – Para. (e)

(e) Upon the termination of a representation for any reason:

(1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyer promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably* necessary to the client's representation, whether the client has paid for them or not; and

(2) the lawyer promptly shall refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.

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CRPC 1.8.6 COMPENSATION FROM ONE OTHER THAN CLIENT

- Former **CRPC 3-310(F)**
- Third party payment permitted if:
 - (1) No interference:
 - Independent professional judgment
 - Lawyer-client relationship
 - (2) Information protected (**§6068(e)(1)** & **CRPC 1.6**)
 - (3) Client's written consent:
 - Time of third party agreement or
 - As soon thereafter as reasonably practicable.
- No disclosure/consent:
 - Authorized by law/court order
 - Public agency/nonprofit organization

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CRPC 1.8.6 COMPENSATION FROM ONE OTHER THAN CLIENT

(f) A lawyer shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2)(a) there is no interference with the lawyer's independence of lawyer's independent professional judgment or with the client-lawyer-client relationship; and
- (3)(b) information relating to representation of a client is protected as required by Rule 1.6, Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
- (c) the lawyer obtains the client's informed written consent* at or before the time the lawyer has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably* practicable, provided that no disclosure or consent is required if:
 - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
 - (2) the lawyer is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

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CRPC 1.8.1 BUSINESS TRANSACTIONS WITH A CLIENT AND PECUNIARY INTERESTS ADVERSE TO A CLIENT

- Requirements:
 - (1) Terms fair & reasonable
 - (2) Disclosed in writing (understandable)
 - (3) Client advised to seek independent lawyer's advice/represented in matter
 - (4) "Informed written consent"
- The lawyer's role in the transaction or acquisition
- Client represented in transaction/acquisition
- Comments [1], [2] & [5]

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CRPC 1.8.1 BUSINESS TRANSACTIONS WITH A CLIENT AND PECUNIARY INTERESTS ADVERSE TO A CLIENT

(f) A lawyer shall not enter into a business transaction with a client, or knowingly* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (1)(a) the transaction or acquisition and its terms on which the lawyer acquires the interest are fair and reasonable* to the client and the terms and the lawyer's role in the transaction or acquisition are fully disclosed and transmitted in writing* to the client in a manner that can be should reasonably* have been understood by the client;
- (2)(b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing* of the desirability of seeking to seek the advice of an independent lawyer of the client's choice and is given a reasonable* opportunity to seek the advice of independent legal counsel on the transaction that advice; and
- (3)(c) the client gives thereafter provides informed written consent* in a writing signed by the client, to the essential terms of the transaction or acquisition, and to the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

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