# Table of Contents

## I. Duties to the Client

### A. Generally

### B. Duty of Loyalty

1. Concurrent Conflicts of Interests
2. Foreign Clients
3. Organizations
4. Conflicts When an Attorney Leaves a Firm or Dies
5. Attorney as a Witness
6. Former Government Employees
7. Former Judges
8. Special Kinds of Conflicts

### C. Duty of Confidentiality

1. Exceptions
2. California Exceptions

### D. Duty of Silence

1. Attorney-Client Privilege

### E. Duty of Competence

1. Means and Objectives
2. Limiting the Scope of Representation

### F. Duty of Financial Integrity

1. Duty to Charge Reasonable Fees

### G. Duty to Protect Client’s Property

## II. Duties to Third Parties

### A. Generally

### B. Duty to Opposing Parties

1. Truthfulness in Statements to Others
2. Respect the Rights of Third Parties
3. Documents Sent Inadvertently
4. Communications with Known Represented Person is Impermissible
5. Communication with Unrepresented Parties

### C. Duty to Accept Pro Bono Representation

## III. Duties to the Court

### A. Generally

### B. Duty of Candor

### C. Duty Not to Knowingly Offer False Evidence

1. False Testimony

### D. Duty to Take Reasonable Remedial Measures If False Evidence Is Offered

### E. Duty Under California Criminal Cases
F. DUTY OF WITHDRAWAL .................................................................9
1. Mandatory Withdrawal ..............................................................9
2. Permissive Withdrawal ..............................................................9
3. Continued Representation ........................................................10
4. Following Withdrawal ..............................................................10

IV. DUTIES TO THE PROFESSION .....................................................10
   A. GENERALLY ...........................................................................10
   B. DUTY TO AVOID UNAUTHORIZED PRACTICE OF LAW ..........10
      1. Exceptions ..........................................................................10
   C. DUTY TO AVOID FALSE AND MISLEADING ADVERTISEMENTS ....10
      1. Reciprocal Referral Agreements ...........................................11
      2. Identity of Advertiser ..........................................................11
      3. California Restrictions ......................................................11
   D. PRESUMED FALSE AND MISLEADING ADVERTISEMENTS .........11
      1. First Amendment ...............................................................11
   E. REGULATION OF TRUTHFUL, NON-DECEPTIVE ADVERTISEMENT.11
      1. Not Improperly Soliciting Clients .......................................11
   F. DUTY REGARDING AGENTS ....................................................11
   G. DUTIES REGARDING FREE LEGAL SERVICES .........................11
   H. DUTIES REGARDING PERSONAL CONTACTS WITH CLIENTS,
      FORMER CLIENTS, FAMILY, AND OTHER LAWYERS ...............12
   I. DUTIES REGARDING DIRECT MAILINGS ..................................12
   J. DUTIES REGARDING HARASSMENT .......................................12
   K. DUTIES REGARDING PREPAID LEGAL SERVICE PLANS ...........12
PROFESSIONAL RESPONSIBILITY

I. DUTIES TO THE CLIENT

A. GENERALLY
There are six duties to the client. (1) Duty of Loyalty; (2) Duty of Confidentiality; (3) Duty of Silence; (4) Duty of Competence; (5) Duty of Financial Integrity; and (6) Duty to Protect Client’s Property.

B. DUTY OF LOYALTY
According to the California Supreme Court “The most fundamental quality of the attorney-client relationship is the absolute and complete fidelity owed by the attorney to his or her client.” “It is an attorney’s duty to protect her client in every possible way, and it is a violation of that duty for her to assume a position adverse or antagonistic to his client without the latter’s free and intelligent consent. By virtue of this rule an attorney is precluded from assuming any relation which would prevent her from devoting her entire energies to her client’s interests.”

An attorney’s duty of loyalty to an existing client is not generally capable of being divided. A lawyer must represent the client’s interests without being influenced by the lawyer’s personal or financial interests or the interests of other clients or third parties. The primary purpose of the duty of loyalty is to encourage public confidence in the integrity of the legal profession.

1. Concurrent Conflicts of Interests
The attorney must not represent a client if it creates a concurrent conflict. A concurrent conflict exists where: (1) representation of the client is directly adverse to the interests of another client; (2) there is a significant risk that the representation of a client will be limited by the attorney’s personal interests, a former client, or third person.

a. Client Consent
An attorney may undertake representation if (1) the attorney reasonably believes she can competently and diligently represent the client; (2) the representation does not involve a claim by one client against another client unless each effected client gives informed written consent and it is reasonable.

Remember, unreasonable conflicts cannot be waived.

b. Imputed Conflicts
If an attorney has a conflict, no attorney in the firm may represent the client. This is not applicable to: (1) former government attorneys; and (2) pure personal or family interests. California rules are silent on this issue.

1 That is: faithfulness to obligations, duties, or observances.
2. **Former Clients**
An attorney who represented a client in a matter may not represent another client in the same or substantially related matter if the new client's interests are adverse to interests of the former client, unless the former client given informed written consent. The attorney may not represent a person in a substantially related matter in which the attorney's former firm represented the client: (1) whose interests are adverse; and (2) where the attorney acquired material information, unless the former client gives informed written consent.

3. **Organizations**
An attorney employed to represent an organization represents through its authorized constituents. When a person associated with the organization advocates an action that may cause it injury the attorney must disclose it to a higher authority and if no action is taken then to persons outside of the organization. In California, the attorney must not disclose confidential information to people outside of the organization unless it is necessary to prevent a criminal act what will cause the death or serious bodily injury. In California, the attorney may withdraw from representation.

   a. **Multiple Representations**
   An attorney may, in addition to the organization, any of its directors, officers, employees, shareholders, or other constituents, subject to conflict of interest provisions.

   b. **Identity of Client**
   An attorney must explain the identity of the client when the attorney knows the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

   c. **Sarbanes Oxley Act**
   If there is evidence of a securities law violation, the attorney must report it to the head legal officer. If a violation is found, the attorney must requests a fix before reporting it to the board, or report to SEC if serious injury to investors may occur. While such conduct may constitute a breach of duty, federal law preempts.

4. **Conflicts When an Attorney Leaves a Firm or Dies**
The firm is not prohibited from representing people with interests adverse to attorney's former client unless: (1) the matter is substantially related; and (2) the attorney left in firm have confidential information.

5. **Attorney as a Witness**
This is only permitted for an uncontested matter or in determining the value of her services or where the client consents.

6. **Former Government Employees**
a. **Prior Public Employees**
   An attorney cannot represent a client regarding a matter the attorney participated in or learned confidential information from, as a government attorney, unless informed written consent is provided. California has not adopted these rules, but a California attorney cannot prosecute and then defend the same defendant.

b. **Current Government Employee**
   A current government employee cannot negotiate for private jobs with the opposing side.

c. **Screening Procedure**
   There is no imputed disqualification if: (1) the disqualified attorney does not share any part of the fee earned; and (2) the government is promptly told of the screening.

7. **Former Judges**

   a. **Lawyer Serving as Third-Party Neutral**
      An attorney must stay neutral and explain her role.

   b. **Negotiating of Future Employment**
      It is impermissible while employed as a judge.

   c. **Later Representation**
      A former judge is not allowed to later represent a party in a matter where the judge, arbitrator, or mediator personally and substantially participated unless written consent is provided.

8. **Special Kinds of Conflicts**

   a. **Financial Assistance to Client**
      In California, an attorney cannot obtain consent for representation with promises to pay debts, but she can lend money after the attorney is hired if the loan is in writing. Model rules provide for no assistance from an attorney other than for costs.

   b. **Financial Interests Adverse to the Client**
      An attorney must not enter into a business transaction with a client or knowingly acquire an ownership interest adverse to a client unless: (1) the terms are fair and reasonable, fully disclosed, and written; (2) the client is given a chance to seek advice from an independent attorney; and (3) the client gives informed consent in writing.

   c. **Designating Oneself as a Beneficiary**
An attorney must not solicit a substantial gift from a client or prepare a will giving attorney or a relation a substantial gift from a client, except where the client is related to the donee. In California, an attorney cannot induce a gift, but can prepare the instrument.

d. Media Rights Based on Representation
Prior to end of representation, an attorney must not make an agreement giving the attorney media rights. In California, such practice is permissible but creates a serious conflict of interest between attorney and the client, so a judge must ensure client understands the conflict and waives it.

e. Compensation from another Party
An attorney cannot accept such compensation unless: (1) the client information is protected; (2) there is no interference with attorney's attorney-client relationship; and (3) the client gives written informed consent.

f. Limiting Liability for Malpractice
Limiting liability for malpractice is not permissible unless the client has an independent attorney.

g. Settling Malpractice Claims with Unrepresented of Former Client
Such is not permissible without advising the client in writing that an independent attorney is desirable and giving the client a chance to consult with an independent attorney.

h. Liability Insurance
California holds both the insurer and the insured are joint clients and the attorney's ethical obligations are governed by the rules of professional conduct and not the insurance contract.

i. Multiple-Party Representation
An attorney who represents two or more clients must not make an aggregated settlement unless each client gives written informed consent. The attorney must disclose nature of the entire settlement.

j. Sexual Relations
Model Rule of Professional Conduct prohibits a sexual relationship with a client. California prohibits: (1) providing incompetent representation because of a sexual relationship; (2) entering sexual relationship by coercion; (3) demanding sex as a condition of representation.

k. Lawyers with Relationship with Each Other
Attorneys must obtain informed consent before they represent different clients in the same matter or substantially related matters.
l. Improper Use of Information Adverse to the Client
   An attorney must not use information relating to representation of a client to the
disadvantage of the client unless the client gives informed consent in writing.

C. DUTY OF CONFIDENTIALITY
   A lawyer must not reveal information relating to the representation of a client acquired
before, during or after the relationship existed. There are seven exceptions under Model
Rules and four California exceptions.

1. Exceptions
   a. The attorney believes it is necessary to prevent a person's death or serious bodily
      injury
   b. It is necessary to rectify or mitigate crime or fraud likely to cause substantial
      financial loss and the client has used attorney's services to commit the crime or
      fraud.
   c. It is necessary to obtain legal advice about a lawyer's personal duty to comply with
      legal ethics rules.
   d. It is required by a court, ethics rules, or statutes.
   e. To collect a fee or protect a lawyer
   f. It is impliedly authorized for representation\(^2\)
   g. The client gives informed consent

2. California Exceptions
   a. To defend against legal malpractice
   b. To collect fees
   c. To prevent death or serious bodily injury
   d. Court order

D. DUTY OF SILENCE

1. Attorney-Client Privilege

\(^2\) For example: to retain an expert witness.
A rule that keeps communications between an attorney and client confidential and protects everything said between attorney and client from being discovered by the opposing party during pretrial investigation, or used as evidence in a trial. The same type of privilege exists between physician and patient, clergy and parishioner, and spouses.

a. Corporate Client
Covers confidential communications between an attorney and high-ranking officials and other corporate employees within the scope of the employee’s duties and employee where: (1) She communicates at the direction of the superior; and (2) knows that communication is to assist corporation in obtaining legal advice.

b. Scope
It also covers communication made through an agent who facilitates the attorney-client relationship. It only extends to legal services, and does not cover communications about other subjects.

c. Exceptions
Exceptions include: (1) Evidence regarding competency of a testator; (2) Litigation regarding former joint clients; (3) Communications relevant to the Board of Directors; (4) When a client seeks an attorney’s services to aid fraud or crime.

California provides an additional exception where the attorney believes disclosure is necessary to prevent a criminal act likely to result in serious bodily injury or death.

E. DUTY OF COMPETENCE
Competence, in any legal service shall mean to apply the: (1) diligence; (2) learning and skill; (3) mental, emotional, and physical ability reasonably necessary for the performance of such service; (4) to supervise the work of subordinate attorney and non-attorney employees or agents; (5) keep a client reasonably informed about the status of a matter; and (6) promptly comply with reasonable requests for information.

1. Means and Objectives
The client decides the objectives of the representation and makes substantive decisions. The attorney is responsible for procedural aspects of the representation.

2. Limiting the Scope of Representation
If it is reasonable and the client gives informed consent, the scope of representation may be limited.

F. DUTY OF FINANCIAL INTEGRITY

3 For example: a law clerk
1. Duty to Charge Reasonable Fees

Fees should be based on such factors as time, labor, skill required, customary fee within locality, result obtained; and experience, ability and reputation of the attorney.

In California, no unconscionable fees are permissible.

a. Writing

California requires a written fee agreement if fees will exceed $1,000, except when: (1) the lawyer acted in an emergency; (2) it is impractical; (3) the legal services are sale as those previously rendered and paid for; (4) the client states in writing she does not want one; or (5) the client is a corporation.

b. Contingent Fees

A method of paying a lawyer for legal representation by which, instead of an hourly or per job fee, the lawyer receives a percentage of the money her client obtains after settling or winning the case. Often contingency fee agreements -- which are most commonly used in personal injury cases -- award the successful lawyer between 20% and 50% of the amount recovered. Lawyers representing defendants charged with crimes may not charge contingency fees.

Contingent fees must be in writing, signed by the client, and state a method for calculating fees. If the attorney is hired than fired, she is entitled to reasonable fees.

The Model Rules provide for no contingency fees.

c. Referral Fees

Referral fees are prohibited, but fees can be split with an outside lawyer provided the division is based on amount of work done and both assume responsibility for the representation. Such agreements must be reasonable, in writing, state the fee split method, and be signed by the client.

In California, an attorney may pay a referral fee to an outside attorney if the client knows all of the terms and consents in writing, the total fee is not unconscionable and it is not increased because of the referral.

G. DUTY TO PROTECT CLIENT'S PROPERTY

An attorney must: (1) hold a client's property separate from her property\(^4\); (2) keep case records; (3) keep the client informed; (4) deliver funds when the client is entitled to receive them; (5) keep any disputed amounts separate.

In California, an attorney must preserve records of client funds or other property for five years.

\(^4\) That is: in a client trust fund.
II. DUTIES TO THIRD PARTIES

A. GENERALLY
There are two duties to third parties: (1) Duty to Opposing Parties; (2) Duty to Accept Pro Bono Representation.

B. DUTY TO OPPOSING PARTIES

1. Truthfulness in Statements to Others
   An attorney cannot make false statements of fact or law or fail to disclose material facts when necessary to avoid perpetuation of fraud.

2. Respect the Rights of Third Parties
   An attorney cannot use means to embarrass, deny legal rights to, or harass a person.

3. Documents Sent Inadvertently
   The recipient must notify the sender so that the sender can take protective measures.

4. Communications with Known Represented Person is Impermissible
   Unless the person's attorney has granted permission or she is otherwise authorized by law or court order.
   
   a. Application to Organizations
      An attorney must get the consent of organization's counsel before communicating with a current constituent of the organization and cannot pry into privileged information with an old employee.

5. Communication with Unrepresented Person
   Is permissible but attorney must: (1) not give advice other than to obtain counsel if interests are adverse; (2) clear up misunderstandings; and (3) not imply disinterest.

C. DUTY TO ACCEPT PRO BONO REPRESENTATION
An attorney is expected to do fifty hours pro bono work per year.

III. DUTIES TO THE COURT

A. GENERALLY
There are seven duties to the court: (1) Duty of Candor; (2) Duty not to Knowingly Offer False Evidence; (3) Duty of Refusal to Offer False Evidence; (4) Duty to take Reasonable Remedial Measures if False Evidence is Offered; (5) Duty Under California Criminal Cases; (6) Duty of Withdrawal.
B. DUTY OF CANDOR
An attorney cannot knowingly: (1) offer false evidence; (2) make a false statement of fact or law or fail to correct a misunderstanding; or (3) fail to disclose controlling legal authority adverse to the attorney's client.

Remember, there is no duty to volunteer bad facts.

C. DUTY NOT TO KNOWINGLY OFFER FALSE EVIDENCE

1. FALSE TESTIMONY
If a client insists on offering false evidence, the attorney must try and convince the client not to. If that fails, attorney must refuse to offer the evidence. An attorney whose client put her in that position may ask to withdraw with permission of the court, but the attorney is not required unless the client attorney relationship has become so strained that she cannot competently represent the client.

D. DUTY TO TAKE REASONABLE REMEDIAL MEASURES IF FALSE EVIDENCE IS OFFERED
If false evidence is offered the attorney must: (1) Speak with the client to warn of the attorney's duty to reveal false evidence; and (2) seek help in correcting false evidence; if that fails (3) the attorney may ask the court permission to withdraw; (3) disclose enough information to court to set the matter straight is she has to violate privilege. The trier of fact will then determine what to do about the falsehood - order a mistrial or reveal it.

E. DUTY UNDER CALIFORNIA CRIMINAL CASES
If the attorney cannot persuade a defendant to testify truthfully, she may ask the court for permission to withdraw. If that fails, the attorney may call the defendant as a witness and question her in the ordinary matter up until the point where she knows the defendant will testify falsely. From then on, the defendant testifies in a narrative fashion. An attorney may not use any of that testimony in closing.

F. DUTY OF WITHDRAWAL

1. Mandatory Withdrawal
An attorney must withdraw if: (1) the attorney is discharged; (2) the attorney's mental condition materially impairs her ability to represent the client; or (3) representation will violate a law or the Rules of Professional Conduct.

2. Permissive Withdrawal
An attorney may withdraw if:

   a. Good Cause.

5 Narrative communication is essentially a story; an account of events over a passage of time shared to one or many listeners.
b. Representation poses an unreasonable financial burden on the attorney.

c. The client fails to fulfill an obligation to the attorney, and the client has been given reasonable warning of the withdrawal.

d. The client insists upon taking a course of action that attorney considers repugnant.

e. The client has used the attorney's services to perpetrate a crime or fraud.

f. The client persists in a course of action involving attorney's services the attorney believes is criminal or fraudulent.

g. No material adverse effect on the interests of the client will result.

3. Continued Representation
An attorney must do so when ordered by the court.

4. Following Withdrawal
The attorney must take reasonable steps to protect a client's interests.

IV. DUTIES TO THE PROFESSION

A. GENERALLY
There are ten duties to the Profession: (1) Duty to Avoid Unauthorized Practice of Law; (2) Duty to Avoid False and Misleading Advertisements; (3) Presumed False and Misleading Advertisements; (4) Regulation of Truthful, Non-Deceptive Advertising; (5) Duties Regarding Agents; (6) Duties Regarding Free Legal Services; (7) Duties Regarding Personal Contacts with Clients, Former Clients, Family, and other Lawyers; (8) Duties Regarding Direct Mailings; (9) Duties Regarding Harassment; (10) Duties Regarding Group and Prepaid Legal Service Plans.

B. DUTY TO AVOID UNAUTHORIZED PRACTICE OF LAW
The rules prohibit a lawyer from: (1) practicing law in a jurisdiction where doing so violates the regulations of the legal profession; and (2) assisting a person who is not a member of the bar in the performance of an activity that constitutes the unauthorized practice of law.

1. Exceptions
Where professional judgment is not involved, non-lawyers may engage in occupations even if they require special knowledge of the law in certain areas.

C. DUTY TO AVOID FALSE AND MISLEADING ADVERTISEMENTS
A lawyer is subject to discipline for any type of communication about the lawyer or her services that is false or misleading. A communication is false of misleading if it: (1) contains
a material misrepresentation of law or fact; or (2) omits information that is necessary to make the communication as a whole not materially misleading.

1. **Reciprocal Referral Arrangements**
   Lawyers and non lawyers are permitted to enter into reciprocal arrangements if explained to the client and they are non-exclusive.

2. **Identity of Advertiser**
   Every lawyer advertisement must include the name and office address of at least one lawyer or law firm that is responsible for its content.

3. **California Restrictions**
   A California lawyer is prohibited from making communications that contain: (1) a guarantee or warranty of the outcome of the case; (2) a dramatization of an accident or other event without disclosing such; (3) an impersonation of a lawyer or client without disclosing such; (4) a contingent fee agreement that does not warn that a client who loses a case that she must still pay litigation costs if that is the arrangement.

D. **PRESUMED FALSE AND MISLEADING ADVERTISEMENTS**
   Communications to a potential client who is in the hospital or who is suffering from physical or mental stress; mailings for fee paying work that are not clearly labeled as advertisements; communications containing testimony without a disclaimer that they are not promises regarding the potential client's case, are presumed false and misleading.

1. **First Amendment**
   The Supreme Court has recognized lawyer advertising as commercial speech protected by the first and fourteenth Amendments. States may adopt reasonable regulations to insure that the advertising is not false or misleading, but may not prohibit all advertising.

E. **REGULATION OF TRUTHFUL, NON-DECEPTIVE ADVERTISING**
   Regulation of commercial speech is subject to intermediate constitutional scrutiny, which means that it may be regulated only if: (1) the government asserts a substantial interest; (2) the government demonstrates that the restriction directly and materially advances the interest; (3) the regulation is narrowly drawn.

1. **Not Improperly Soliciting Clients**
   A lawyer may not seek fee-paying work by initiating personal or live telephone contact, or real time electronic contact, with a prospective client who is not a lawyer and with whom the lawyer has no personal, family, or prior professional connection.

F. **DUTY REGARDING AGENTS**
   A lawyer may not use agents to solicit in a manner that she could not herself solicit.

G. **DUTIES REGARDING FREE LEGAL SERVICES**
The solicitation rule applies only when the lawyer's pecuniary gain is a significant motive for the solicitation. Thus, offers of free legal services, made without hope of pecuniary gain, are permitted.

H. DUTIES REGARDING PERSONAL CONTACTS WITH CLIENTS, FORMER CLIENTS, FAMILY, AND OTHER LAWYERS
A lawyer may solicit legal business from her family, former clients, and other lawyers.

I. DUTIES REGARDING DIRECT MAILINGS
Absent actual knowledge that the prospective client does not wish to receive communications from the lawyer, a lawyer may send truthful, non-deceptive letters to persons known to fact a specific legal problem. Solicitations must be labeled as "advertising material".

J. DUTIES REGARDING HARASSMENT
A lawyer must not coerce or harass prospective clients who have indicated that they do not wish to be solicited.

K. DUTIES REGARDING GROUP AND PREPAID LEGAL SERVICE PLANS
A lawyer may personally contact a group that proposed to adopt a prepaid or group legal services plan. Furthermore, the plan may itself make personal and live telephone contact with prospective subscribers who are not known to need specific legal services.