

California Rules of Professional Conduct

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On May 10, 2018, the California Supreme Court approved new [California Rules of Professional Conduct](#) (“New Rules”). Sixty-Nine New Rules have been implemented. It is the largest overhaul of the State’s rules in over thirty years. To provide some context into the scale of change, the previous Rules of Professional Conduct were thirty-three pages long, where new rules are 106 pages. These are changes that all 267,464 attorneys in California need to study.

The New Rules are significantly more in line with the American Bar Association’s Rules of Professional Conduct (“ABA Rules”). Future California Bar Exam takers will be pleased that one need only memorize one set of Rules, but some discrete and significant differences remain. For example, under ABA Rules, tests the reasonableness of a fee are, in part, based upon “fee[s] customarily charged in the locality for similar legal services.” The New Rules have no such requirement. In part, the test is “whether the lawyer has failed to disclose material facts.” Lawyers will need to be familiar with these differences to avoid committing sanctionable actions.

One of the most refreshing and forward-thinking changes to the New Rules is the leniencies in connection with work for non-profits and indigent clients. A lawyer may now pay the costs of prosecuting or defending a claim on behalf of an indigent client. Furthermore, the New Rules explicitly define “costs” to include reasonable expenses of litigation, including court costs, and reasonable expenses in preparing for litigation or in providing other legal services to the client. Additionally, the New Rules allow a lawyer to share a court-awarded legal fee with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

There are various other interesting changes, such as modifications to the rules regarding sexual relations with current clients. The New Rules give the State Bar the discretion to not pursue a disciplinary action if the sexual relationship is reported by a third party. The New Rules now forbid gift “solicitations” from clients, in contrast to the old rules which forbid the payment of any “inducements.” Previously, the rules limited accepting gifts from a “parent, child, sibling, or spouse,” but gifts are now allowed from those related both by “blood or affinity” and “spouse or domestic partner.”

There are changes to Conflict of Interest rules, Duties to Former Clients rules, and Duties To Prospective Client rules. Overall, the New Rules make it clear that lawyers owe a duty to clients to be forthright and timely in advice. Also, lawyers owe a duty to themselves and their colleagues to be honest and trustworthy in their zealous pursuits. The New Rules take effect November 1, 2018.

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