

SBBA South Bay *founded 1953* Bar Association

Presents



Civil Litigation Brown Bag Luncheon



1 hr. MCLE Legal Ethics

Moderator

Judge Stuart M. Rice

Panelists

Justice J. Gary Hastings (Ret.)
State Bar Judge Donald F. Miles
Attorney Patrick E. Stockalper

Topic

“Best Practices to Avoid Malpractice and
State Bar Complaints”

Date, Time & Location

Tuesday, May 13th, 2014
12:15 -1:15pm

The Torrance Courthouse
Department B
825 Maple Avenue, Torrance, CA 90503

Price

If you would like 1 hour MCLE credit, there is a \$5 charge at the door for SBBA members
\$10 charge for non-SBBA members

The South Bay Bar Association is an approved provider of MCLE credit for the California State Bar.

If you have any questions, please contact the South Bay Bar Association Office
(310) 325-4200 or sbba2007@sbcglobal.net



BEST PRACTICES TO AVOID MALPRACTICE AND STATE BAR COMPLAINTS

- 1 Slide Pages**
- 11 Hypotheticals**
- 16 Affirmative Duties of An Attorney**
- 18 Most Common Source of Attorney Discipline**
- 20 Resources Re Legal Ethics and Disciplinary Procedures for California Law Practitioners**
- 21 Resources Available on the State Bar Website for Downloading**
- 22 Biographies of Panelists and Moderator**

If you would like an electronic version of this handout for the MCLE presentation, Best Practices to Avoid Malpractice and State Bar Complaints, please send an email to jbolender@bolender-firm.com. It can be viewed on an iPad, iPhone, Android, and any other device that accepts PDF documents.

Best Practices to Avoid Malpractice and State Bar Complaints

Moderator

Hon. Stuart M. Rice

Panelists

Justice J. Gary Hastings (Ret.)
State Bar Judge Donald F. Miles
Patrick E. Stockalper, Esq.

South Bay Bar Association
May 2014

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Six Easy Ways to Avoid State Bar Problems

1. Communicate with Your Clients

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Duty to Keep Client Informed of Status and Developments

§6068(m) Duties of Attorney

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

- (1) To respond promptly to reasonable status inquiries of clients and
- (2) To keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

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Six Easy Ways to Avoid State Bar Problems

1. Communicate with Your Clients
2. Maintain Current Membership Address

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Maintain Current Membership Address

§6068(m) Duties of Attorney

A member of the State Bar shall maintain on the official membership records of the State Bar the member's **current office address** and **telephone number** or, if no office is maintained, the address to be used for State Bar purposes or purposes of the agency charged with attorney discipline.

A member shall notify the membership records office of the State Bar of any change in the above information **within 30 days of any change**.

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The 4D Disbarment

Due to Invalid State Bar Membership Address

Disappearance - Invalid State Bar Address

Ineligibility - Unknown to Member

Dues

MCLE

Disciplinary Charges - Unknown - Sent to Prior Address

Default

Certified Mail to Official Address is Valid Service (B&P Code, § 6002.1, subd. (c).)

Disbarment (Rules Proc. of State Bar, rule 5.85.)

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Six Easy Ways to Avoid State Bar Problems

1. Communicate with Your Clients
2. Maintain Current Membership Address
3. Comply with MCLE Requirements

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Rules Regarding MCLE Compliance

- Must report MCLE compliance **no later than the day following the end of the compliance period.**
- For a year after reporting MCLE compliance, a member **must retain and provide upon demand** and to the satisfaction of the State Bar:
 - A provider's certificate of attendance;
 - A record of self-study that includes the title, provider, credit hours, and date of each activity;

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The Most Frequent Sources of Attorney Discipline

MCLE Noncompliance Consequences

Administrative Ineligibility:

- Noncompliance is failure to:
 - Complete the required education during the compliance period or an extension of it;
 - Report compliance or claim exemption from MCLE requirements;
 - Keep a record of MCLE compliance; or
 - Pay fees for noncompliance.

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The Most Frequent Sources of Attorney Discipline

Misconduct Resulting from MCLE Non-Compliance

- **Unauthorized Practice of Law**
A member who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.
- **Illegal Fees**
(Required to Refund)
- **False Certification of Compliance**
(Charged with Moral Turpitude)

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Six Easy Ways to Avoid State Bar Problems

1. Communicate with Your Clients
2. Maintain Current Membership Address
3. Comply with MCLE Requirements
4. Comply with CTA Requirements

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Los Angeles Daily Journal
May 1, 2014

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Six Easy Ways to Avoid State Bar Problems

1. Communicate with Your Clients
2. Maintain Current Membership Address
3. Comply with MCLE Requirements
4. Comply with CTA Requirements
5. Don't Ignore State Bar Investigations

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The Most Frequent Sources of Attorney Discipline

Duty to Cooperate in Disciplinary Investigation or Proceeding

Business and Professions Code Section 6068, subd. (i), subject to constitutional and statutory privileges, requires attorneys to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against that attorney.

"A lawyer who represents himself has a fool for a client."

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Six Easy Ways to Avoid State Bar Problems

1. Communicate with Your Clients
2. Maintain Current Membership Address
3. Comply with MCLE Requirements
4. Comply with CTA Requirements
5. Don't Ignore State Bar Investigations
6. Read the Rules of Professional Responsibility!!!

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GINGER FIRES SKIPPER

Rule of Professional Conduct 3-700(D)

(D) A member whose employment has terminated shall:

- (1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client papers and property. *"Client papers and property" includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not;* and
- (2) Promptly refund any part of a fee paid in advance that has not been earned.

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GINGER FIRES SKIPPER

Attorney's Duty To Preserve And Return Original Will

Prob. Code § 710

- If a document [original will] is deposited with an attorney, the attorney... shall use ordinary care for preservation of the document on and after July 1, 1994, whether or not consideration is given, and shall hold the document in a safe, vault, safe deposit box, or other secure place where it will be reasonably protected against loss or destruction.

Prob. Code § 720

- A depositor may terminate a deposit on demand, in which case the attorney shall deliver the document to the depositor.

Rule 4-100(B) – Duties to safeguard and return client "properties"

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Attorney Duty to Notify Client of Loss of Will

Prob. Code § 711

If a document deposited with an attorney is lost or destroyed, the attorney shall give notice of the loss or destruction to the depositor[.]

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GINGER FIRES SKIPPER

Potential Safe Harbor from Liability for Losing Will

Prob. Code § 712

Notwithstanding failure of an attorney to satisfy the standard of care required by Section 710 or 716, the attorney is not liable for loss or destruction of the document if

- [1] the depositor has actual notice of the loss or destruction and a reasonable opportunity to replace the document, and
- [2] the attorney offers without charge to assist the depositor in replacing the document ... and assist in its execution.

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John Hires Yoko

Rule 3-310(C)

- A member shall not, **without the informed written consent of each client**:
 - Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
 - Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
 - Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.
- "**Disclosure**" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client.
- "**Informed written consent**" means the client's or former client's written agreement to the representation following written disclosure.

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Rachel Likes Chandler RICKY LOVES LUCY

Rule 1-400

"Communication" means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a law firm directed to any ... prospective client, including any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof.

A communication or a solicitation (as defined herein) shall not:

Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public.

Section 6157.1

No advertisement shall contain any false, misleading, or deceptive statement or omit to state any fact necessary to make the statement made, in light of circumstances under which they are made, not false, misleading, or deceptive.


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Rachel Likes Chandler
RICKY LOVES LUCY

Section 6158

In advertising by electronic media, the message as a whole may not be false, misleading, or deceptive, and the message as a whole must be factually substantiated. The message means the effect in combination of the spoken word, sound, background, action, symbols, visual image, or any other technique employed to create the message. Factually substantiated means capable of verification by a credible source.



Rachel Likes Chandler

Section 6158.1

There shall be a rebuttable presumption affecting the burden of producing evidence that the following messages are false, misleading, or deceptive within the meaning of Section 6158:

- A message as to the ultimate result of a specific case or cases presented out of context without adequately providing information as to the facts or law giving rise to the result.
- A message referring to or implying money received by or for a client in a particular case or cases, or to potential monetary recovery for a prospective client. A reference to money or monetary recovery includes, but is not limited to, a specific dollar amount, characterization of a sum of money, monetary symbols, or the implication of wealth.



Rachel Likes Chandler

Section 6158.3

If an advertisement in the electronic media conveys a message portraying a result in a particular case or cases, the advertisement must state, in either an oral or printed communication, either of the following disclosures: The advertisement must adequately disclose the factual and legal circumstances that justify the result portrayed in the message, including the basis for liability and the nature of injury or damage sustained, or the advertisement must state that the result portrayed in the advertisement was dependent on the facts of that case, and that the results will differ if based on different facts.

Rachel Likes Chandler
RICKY LOVES LUCY

Standards under Rule 1-400

"Communications" which are presumed to be in violation of rule 1-400:

- A communication which contains guarantees, warranties, or predictions regarding the result of the representation.
- A communication which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as "this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter."
- A communication, except professional announcements, seeking professional employment for pecuniary gain, which is transmitted by mail or equivalent means which does not bear the word "Advertisement," "Newsletter" or words of similar import in 12 point print on the first page.

RICKY LOVES LUCY

- A retainer is a sum of money paid by a client to secure an attorney's availability over a given period of time.
- The characterization of the fee in fee agreement is not determinative, including language that it is non-refundable, earned on receipt, and/or a retainer paid to secure an attorney's availability.
- Attorneys, discharged by the client for any reason, are limited to an attorney fee recovery based on the reasonable value of services provided up to the time of discharge.
- A terminated attorney who seeks to enforce a minimum payment and/or non-refundable fee provision may be culpable of violating the prohibition of rule 4-200 against entering into an agreement for, charging, or collecting an unconscionable fee.

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Advanced fees may, but are not required, to be deposited into a client trust account. (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164.) [Beware of pending legislation]

Advanced costs must be deposited and maintained in a client trust account. (Rule 4-100(A).)

RICKY LOVES LUCY

Rule 3-110 Failing to Act Competently

(A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

(B) For purposes of this rule, "competence" in any legal service shall mean the (1) diligence, (2) learning and skill, (3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

(C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by (1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or (2) by acquiring sufficient learning and skill before performance is required.

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Section 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.

Misrepresentations and/or concealment regarding employment qualifications constitutes acts of moral turpitude. (*In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.)

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RICKY LOVES LUCY

Rule 1-400

- "Communication" means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a law firm directed to any ... prospective client, including any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof.

- A communication or a solicitation (as defined herein) shall not:
 - State that a member is a "certified specialist" unless the member holds a current certificate as a specialist issued by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors, and states the complete name of the entity which granted certification.

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Ginger Fires Skipper

After many years, Ginger fired her longtime lawyer, Skipper, and demanded the return of all her files, communications, and other records including the will that she had duly



executed four years earlier. Skipper responded that his office, which had gone ***“totally paperless”*** two years earlier, would immediately send all existing records after receiving Ginger’s written request along with her final payment for services rendered. Two months later, Ginger received a diskette containing electronically scanned copies of Ginger’s records going back three years, but no original paper files were included nor any text

messages between Skipper and Ginger’s smart phones. ♦

John Hires Yoko

John called his old friend, Yoko, a newly admitted lawyer at a workers compensation law firm, instructing her to immediately set up a formal company for he and his band members. They needed to execute a long-term recording contract with a major record label in five days. Three days later she presented a standard form partnership agreement to the band. An appendix contained clauses whereby the



other band members, Paul, George, and Ringo, assigned all of their rights in the band to the partnership. Just before each member signed the agreement, Yoko discovered that John had written all the music and lyrics, and that Ringo had bankrolled the band’s money losing operations for over a decade. After they all signed, none of the band members objected when Yoko explained that under the agreement, John, the smart one, possessed the right to break any deadlocks on band related business decisions. ♦



Ricky Loves Lucy

Ricky, who wanted a simple will, typed the following words into a Google search: **wills, specialist, lawyer, flat rate, Torrance**. The search results led Ricky to the Lucy's website because Lucy had embedded those words into her website's metatag information (invisible code seen only by search engine robots). He saw on the website that Lucy performs wills for a flat rate, so he sent her the following text

message: **"you specialize in wills? how much \$\$ for simple will?"** Lucy responded, **"simple will, yes, flat fee \$6.5k, send \$1,000 now to start."** As Ricky logged on to PayPal to issue payment, Lucy sent a second text message: **"Type in 'Non-Refundable Retainer' on payment's memo field."** Ricky followed Lucy's instructions and completed the transaction. Lucy immediately transferred Ricky's \$1,000 payment to her personal checking account. Ricky unexpectedly suffered a heart attack and died one day later before Lucy had time to learn how to draft a simple will. ♦

Rachel Likes Chandler

Chandler, a trial lawyer, posted the following status on his Facebook page: **"Another win in court today! Low meds, high verdict who else what to be a millionaire?"** Rachel, one of his Facebook friends, clicked **"Like"** on the posting, and then she embedded a link to that posting on her LinkedIn account. She has 400 connections, one of which is Chandler, who clicks **"Like"** on Rachel's LinkedIn posting, which can be seen by any of Chandler's 1,000 connections along with the text of his original Facebook posting. [See discussion below by Justice \(Ret.\) J. Gary Hastings.](#) ♦



The **RACHEL LIKES CHANDLER** hypothetical raises the issue of communication and testimonials controlled by California Rules of Professional Conduct, Rule 1-400 and Business and Professional Code §§ 6157.1, 6158, 6158.1 and 6158.3.

Chandler's posting on Facebook may constitute a communication defined as "any message or offer made by or on behalf of a member concerning the availability for professional employment . . . directed to any . . . prospective client, including any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof."

If Chandler's post was only available for viewing by his "friends," who are limited in scope, it might be argued that this does not fit the definition because it wasn't directed to the "general public or any substantial portion thereof." But if the post is available to anyone who visits his public Facebook page, it should qualify as a communication. But when Rachel placed it on her LinkedIn account and Chandler then linked that to his Facebook account it broadened the scope of people who could view it and most likely qualifies as a communication.

As a "communication" it must not "Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public." (See Business & Professions Code § 6157.1.)

Section 6158.1 establishes a rebuttable presumption which affects the burden of producing evidence that a message is false, misleading or deceptive if it is: "A message as to the ultimate result of a specific case or cases presented out of context without adequately providing information as to the facts or law giving rise to the result." Chandler's statement fails to provide the context out of which the result was achieved.

By linking Rachel's comment on LinkedIn to his Facebook page it is arguable that Chandler has also created an advertisement containing a testimonial statement by Rachel. Section 6158.3 provides:

"If an advertisement in the electronic media conveys a message portraying a result in a particular case or cases, the advertisement must state, in either an oral or printed communication, either of the following disclosures: The advertisement must adequately disclose the factual and legal circumstances that justify the result portrayed in the message, including the basis for liability and the nature of injury or damage sustained, or the advertisement must state that the result portrayed in the advertisement was

dependent on the fact of that case, and that the results will differ if based on different facts.”

Again, Chandler’s link and statement fail to fulfill these requirements.

Chandler’s link to Rachel’s LinkedIn post also creates a rebuttable presumption this is a misleading communication, a testimonial, pursuant to Standard 2 of Rule 1-400:

“A communication which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as ‘this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.’”

Chandler’s statement does not contain this disclaimer.

Query, does a LinkedIn account or an AVVO account which allows users to rate or recommend lawyers potentially violate these prohibitions? At least one lawyer has opined that it does not:

“First of all, most online reviews and endorsements are posted independently by third parties. Attorneys don’t chose, pay for, or control them. Information posted to Facebook, Twitter, LinkedIn, Avvo and their kin should be viewed simply as an online version of the time-honored word-of-mouth reputation that has always accompanied the work of attorneys, and not as communications made by or on behalf of the lawyer who may be the subject of online review. In short, these messages are not communications made by a lawyer, and they don’t propose a specific transaction.”¹

* * * * *

¹ Josh King, The Daily Journal Corporation at <http://callawyer.com/common/CLprint.cfm?eid=922755&evid=1> - Josh King is general counsel and vice president of development for Avvo, Inc.)

Bada Bing!

Tony, a highly regarded trial lawyer, worked at a large law firm from 2004 to 2007, handling over 100 litigation files for a client, Bada Bing!, a popular entertainment venue for gentlemen. During that time, he was privy to many confidential client communications including disputes with vendors and suppliers. After forming his own law firm, Carmela retained Tony in 2011 to sue Bada Bing! for employment discrimination. Bada Bing! demanded that Tony withdraw as attorney of record. After Tony responded, ***“Forget about it,”*** Bada Bing! filed a motion to disqualify Tony as Carmela’s attorney in the lawsuit. The motion’s supporting evidence showed Tony had learned many details of corporate policy concerning vendors, suppliers, etc. but the evidence showed no involvement by Tony in employment related matters. The trial court granted the motion reasoning that Tony’s knowledge of his former client’s confidential and privileged information served as a basis to disqualify him from taking an adverse position against Bada Bing! in the discrimination case. Did the trial court reached the correct conclusion? See relevant authorities below. ♦



The substantial relationship test does not subject an attorney to automatic disqualification on this ground alone. (See Banning Ranch Conservancy v. Superior Court (2011) 193 Cal.App.4th 903, 918 [123 Cal. Rptr. 3d 348] [successive representations in cases under Cal. Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) not substantially related. In the case of successive representation of clients with adverse interests, a disqualification motion juxtaposes the client's right to be represented by his or her counsel of choice with the attorney's duty to maintain the confidences of his or her former client. (City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839, 846 [43 Cal. Rptr. 3d 771, 135 P.3d 20] (Cobra Solutions)).) In a case like this, “the trial court must balance the current client's right to the counsel of its choosing against the former client's right to ensure that its confidential information will not be divulged or used by its former counsel.” (ibid.)

In order to disqualify the attorney, the former client must show that the subjects of the successive representations are substantially related. (Cobra Solutions, *supra*, 38 Cal.4th at p. 847.) A substantial relationship exists where “the attorney had a direct professional relationship with the former client in which the attorney personally provided legal advice and services on a legal issue that is closely related to the legal issue in the present representation. (Jessen v. Hartford Casualty Ins. Co. (2003) 111 Cal.App.4th 698, 710–711 [3 Cal. Rptr. 3d 877].) If the former representation involved such a direct relationship with the client, the former client need not prove that the attorney possesses actual confidential information. (Id. at p. 709.)” (Cobra Solutions, at p. 847.) The attorney is conclusively presumed to possess confidential information “if the subject of the prior representation put the attorney in a position in which confidences material to the current representation would normally have been imparted to counsel.” (*Ibid.*; see Flatt v. Superior Court (1994) 9 Cal.4th 275, 283 [36 Cal. Rptr. 2d 537, 885 P.2d 950]; H. F. Ahmanson & Co. v. Salomon Brothers, Inc. (1991) 229 Cal.App.3d 1445, 1453 [280 Cal. Rptr. 614].)

Affirmative Duties of An Attorney

- Keep client funds in client trust account. (Rule 4-100(A).)
- Properly remove advanced fees from client trust account at “earliest reasonable time” after fees are earned. (Rule 4-100(A).)
- Promptly notify client of attorney’s receipt of client’s funds or property. (Rule 4-100(B).)
- Properly identify, label, and store client properties. (Rule 4-100(B).)
- Create and maintain (5 years) required records re: receipt, storage, and disbursement of client funds, properties. (Rule 4-100(B).)
- At the client’s written request, furnish within 10 days a complete statement of the funds received and disbursed and any charges on the trust account. (Bus. & Prof. Code, §6091.)
- Promptly refund unearned fees and client properties. (Rules 3-700(D), 4-100(B).)
- Keep client advised of significant developments. (Rule 3-500.)

- Notify client of settlement offers. (Rule 3-510.)
- Promptly respond to client inquiries re status, billings, fees.
- Promptly comply with reasonable client requests for copies of documents. (Rule 3-500.)
- Take reasonable steps to avoid prejudice to client on termination of relationship. (Rule 3-700.)
- Provide files to client on termination of relationship. (Rule 3-700.)
- Cooperate in any disciplinary investigation or other regulatory or disciplinary proceeding against you (subject to 5th Amendment).
- Retain for two years copies of all “communications” made by written or electronic media re attorney’s availability for professional employment (including letterhead, business cards, ads, correspondence). (Rule 1-400.)
- Provide required notices to state bar and clients of employment of disbarred, suspended, resigned, or involuntarily inactive Attorneys. (Rule 1-311.)
- Report to State Bar Within 30 Days:
 - Imposition of judicial sanctions of \$1,000 or more (except discovery sanctions)
 - The bringing of a felony prosecution against you
 - Entry of a civil judgment against you for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity
 - The filing of 3 or more lawsuits against you in a 12-month period
 - Your conviction of any felony or designated misdemeanor (§ 6068(i).)
 - Disciplining of you by another agency or board
 - Reversal in proceeding based on your misconduct, gross incompetence, or misrepresentation



- Obtain written informed consent from client re adverse interests. (Rule 3-310.)
- identify and avoid conflicts. (Rule 3-310.)
- Inform client in writing of specified relationships with counsel for another party. (Rule 3-320.)
- Obtain client's informed written consent before accepting compensation from third party. (Rule 3-200(F).)
- Satisfy fairness and written disclosure requirements of rule 3-300 before entering into business transaction with client or acquiring adverse pecuniary interest. (Rule 3-300.)
- Obtain client's informed written consent to any dividing of legal fee with another attorney. (Rule 2-200.)

Most Common Sources of Attorney Discipline

- Failure to Act with Competence
- Failure to Keep Client Advised of Significant Developments and/or Respond to Client Inquiries
- Misrepresentations
 - To Client
 - To Courts
 - To State Bar
 - To Others
- Failure to Comply With Court Order and/or Report Sanctions
- Maintaining Inappropriate Claims or Defenses in Litigation
- Criminal Convictions (especially repeated DUI's)
- Unauthorized Practice of the Law
 - By Member
 - By Others
- Mishandling Client Funds and Trust Accounts

- Failure to Deposit Client Funds in a Client Trust Account (CTA)
- Misappropriation
- “Commingling” Personal Funds in CTA
- NSF checks on CTA
- Culpability for Acts of Others
- Mishandling Valid Liens on Client Funds
- Failure to Pay Client Funds Promptly on Demand
- Mishandling Client Fee Issues
 - Illegal/Unconscionable Fees/Fee Agreements
 - Improper Collection Efforts
 - The Elusive True Retainer
 - Improper fee-Sharing
 - Mishandling Payment of Client’s Fees by a Third-Party
 - Legal Fees for Home Loan Modifications
- Mishandling Termination of Client Relationship
 - Failure to Release Client’s File/Property on Request
 - Failure to Return Unearned Fees
 - Failure to Provide Accounting
 - Failure to Reasonable Steps to Avoid Reasonably Foreseeable Prejudice to Client
- Mishandling Business Dealings with Client
- Miscellaneous Acts of Moral Turpitude
- Failure to Cooperate with State Bar Investigations
- Failure to Maintain a Current Address with the State Bar
- False Certifications of MCLE Compliance



Resources Re Legal Ethics and Disciplinary Procedures for California Practitioners

California Rules of Professional Conduct/The State Bar Act (“Publication 250”)

Booklet available from State Bar containing the California Rules of Professional Conduct, The State Bar Act (Bus. & Prof. Code, §§6000 et seq.), relevant California Rules of Court, relevant statutes regarding duties of members of the State Bar, Rules and Regulations Pertaining to Lawyer Referral Services, and the Minimum Continuing Legal Education (MCLE) Rules and Regulations.

California Compendium on Professional Responsibility

A multi-volume ethics reference manual containing the ethics opinions published by the State Bar of California, the Bar Association of San Francisco, the Los Angeles County Bar Association, the Orange County Bar Association and the San Diego County Bar Association; Publication 250 (see above); and the California Code of Judicial Conduct.

Handbook on Client Trust Accounting for California Attorneys

Practical guide from State Bar to assist attorneys in complying with record-keeping standards for client trust accounts. Includes a copy of applicable standards and statutes, step-by-step description of how to maintain a client trust account, and sample forms.

California State Bar Court Reporter

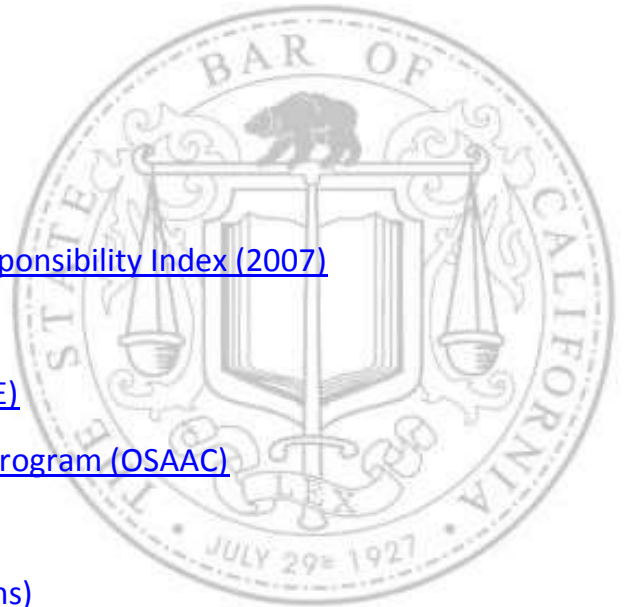
The official source for the opinions of the Review Department of the State Bar Court. Contains the full text of the published opinions, case summaries, and a detailed index and digest.

State Bar’s Ethics Hotline

State-wide toll-free confidential hotline:
1-800-2-ETHICS
(1-800-238-4427)

Resources Available on State Bar Website for Downloading

- [Attorney Civility Guidelines](#)
- [California Rules of Professional Conduct](#)
- [The State Bar Act \(B&PC §§ 6000 et seq.\)](#)
- [Publication 250 FAQs](#)
- [California Compendium on Professional Responsibility Index \(2007\)](#)
- [Legislative News & Information](#)
- [Minimum Continuing Legal Education \(MCLE\)](#)
- [Out-of-State Attorney Arbitration Counsel Program \(OSAAC\)](#)
- [Practical Training of Law Students](#)
- [Constitution of California \(relevant provisions\)](#)
- [California Rules of Court](#)
- [Rules of Practice of the State Bar Court](#)
- [Rules of Procedure of the State Bar Court](#)
- [Related Statutes Regarding Professional Conduct, Discipline of Attorneys, and Duties of The SBC](#)
- [Handbook on Client Trust Accounting for California Attorneys](#)
- [Rules and Regulations Pertaining to Lawyer Referral Services](#)
- [To 10 Ethics Traps](#)
- [The Most Common Legal Malpractice Claims by Type of Alleged Error](#)
- [Sample Fee Agreements](#)
- [Rules Regulating Interest-Bearing Trust Fund Accounts for the Provisions of Legal Services to Indigent Persons](#)



Justice Gary Hastings (ret.)

GARY HASTINGS served as an Associate Justice of the California Court of Appeal, Second Appellate District, Division 4, from September 1993 to February 2006 and continued to serve on assignment through August 2006. He sat on the Los Angeles County Superior Court from 1985 until his appointment to the appellate bench. On the Superior Court, he handled civil and criminal trials, family law matters, a probate calendar, law and motion calendars, and a civil master calendar. He was Supervising Judge of the Southwest branch from 1989-1990. Prior to joining the bench, Justice Hastings was in private practice from 1972 to 1985, specializing in personal injury, product liability, and business litigation. He has been a member of the California Judges Association since 1985, and the American Bar Association 1972-85 and 1992-1996. Justice Hastings is a former member of the Association of Southern California Defense Counsel, 1979-85, and Los Angeles County Bar Association, 1972-85. Justice Hastings is presently an Adjunct Professor at Southwestern University School of Law where he has taught since August 2006. He is also on the panel of mediators and arbitrators for Alternative Resolution Centers, focusing his practice on complex business disputes and insurance litigation.



Judge Donald F. Miles



DONALD F. MILES is a Judge of the State Bar Court of California, having been appointed by Governor Schwarzenegger to that position in 2006. A graduate of Stanford University (With Distinction, 1971) and Hastings College of the Law, University of California (Order of the Coif, 1974), he served as law clerk to Justice William P. Clark, Jr. of the California Supreme Court before entering private practice in 1975. He is a former Director of the San Francisco law firm of Howard, Rice, Nemerovski, Canady, Falk and Rabkin, where he chaired the Litigation Department and served as Firm Counsel; and he is a former partner of Ropers,

Majeski, Kohn & Bentley, where he had offices in Los Angeles and San Francisco. He has enjoyed an “av” peer review rating from Martindale-Hubbell since the mid-1980’s and was elected to the International Association of Defense Counsel in 1987.

Judge Miles is a frequent lecturer and educator. He has been an adjunct professor at Hastings College of the Law, teaching Evidence/Advocacy; and he has taught trial practice programs for Continuing Education of the Bar (CEB), NITA, Hastings Center for Trial and Appellate Advocacy, and the Federal Practice Program for the U.S. District Court for the Northern District of California. He is now a frequent lecturer on the professional obligations of attorneys.

He is also the author of numerous publications, including Laying a Foundation to Introduce Evidence (Preparing and Using Evidence at Trial), CEB Action Guide, 2010 (previous editions issued biannually from 1989 to 2008); chapters on “Evidence Overview” and “Trial Exhibits” in California Trial Practice: Civil Procedure During Trial, CEB, 1995 (with annual updates issued 1995-2010); and the chapter on “Defending With Independent Counsel for Insured,” in California Liability Insurance Practice: Claims & Litigation, CEB, 1991 (with annual updates issued 1992-2010).

Judge Miles is a former member of the California Legislature’s Joint Committee on Tort Law and served as a member of the California State Bar’s Attorney Civility Task Force.

Judge Stuart Rice

STUART M. RICE is a judge for the Superior Court of Los Angeles County in California. He



was appointed by former governor Arnold Schwarzenegger on July 27, 2005 to succeed Thomas Lyle Willhite. He received a bachelor's degree from Tufts University and a J.D. from Northeastern University School of Law. From 1978 to 1983, Judge Rice was an associate at Gottlieb, Gottlieb and Stein. From 1983 to 1987, he was a solo practitioner. From 1983 to 1987, Judge Rice focused his practice on civil litigation, business litigation, and probate matters at various law firms. From 2003 to 2005, he served as a

court commissioner for the Superior Court of the County of Los Angeles. In addition to training pro tem judges, Judge Rice is a frequent speaker and presently serves as President of the Executive Committee of the Benjamin Aranda III chapter of the American Inns of Court.

Patrick E. Stockalper, Esq.

PATRICK STOCKALPER is a partner at the Manhattan Beach office of the law firm, Rebak, McAndrews, Kjar, Warford, Stockalper & Moore, LLP, which specializes in all areas of civil defense litigation. Mr. Stockalper has concentrated his practice in the areas of medical malpractice, dental malpractice, legal malpractice, and general liability. He was the 2009-2010 national President of the Litigation Counsel of America (LCA), a trial lawyer honorary society composed of less than ½ of 1% of American lawyers. Mr. Stockalper is a Charter Fellow of the LCA, a Barrister in one of the LCA's distinguished trial orders, and serves as a Co-Chair of the California delegation of the society. Mr. Stockalper is a member of the American Board of Trial Advocates (ABOTA) in which he has served on the Board of Directors, as membership chairman, and as a participant in the Masters in Trial Program. He is also a member of the Federation of Defense and Corporate Counsel (FDCC) and the Association of Southern California Defense Counsel (ASDC) and has been a Southern California Super Lawyer each year since 2007.



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