

CLEAN

**Rule 8.4 Misconduct
(Proposed Amended Rule)**

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law.

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes "other misconduct warranting discipline" as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these rules and the State Bar Act.

CLEAN

[6] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

[7] Unprotected activities, including speech, that may be the basis for discipline under paragraph (c) or (d) include: (1) a statement made with the specific intent of producing imminent lawless action against a judge or judicial officer and likely to do so (*Counterman v. Colorado* (2023) 600 U.S. 66 [143 S.Ct. 2106]; *Brandenburg v. Ohio* (1969) 395 U.S. 444, 447 [89 S.Ct. 1827] (*per curiam*)); (2) a true threat of violence, that is, a statement that a reasonable observer would understand to be a “serious expression” conveying that the speaker means to “commit an act of unlawful violence” against a judge or judicial officer made with intent, knowledge, or reckless disregard that others could regard the statement as threatening violence (*Counterman v. Colorado, supra*, 600 U.S. at p. 74); and (3) a false statement of fact, or a statement asserted as opinion that “implies actual facts that are capable of objective verification” that are false, regarding a judge or judicial officer made with knowledge or reckless disregard of the truth or falsity of the facts (*In re Yagman* (9th Cir. 1995) 55 F.3d 1430, 1441), using an objective standard to determine “what a reasonable attorney, considered in light of all [their] professional functions, would do in the same or similar circumstances.” (*United States Dist. Ct. v. Sandlin* (9th Cir. 1993) 12 F.3d 861, 867. See also rule 8.2(a); Bus. & Prof. Code, § 6068, subd. (b).)

[8] For purposes of this rule, “judge” and “judicial officer” have the same meaning as in rule 3.5(C).

REDLINE

Rule 8.4 Misconduct (Redline of the Current Rule to the Proposed Rule)

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- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
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- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. ~~For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).~~

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