



What In-House Counsel Need to Know about California's New Legal Ethics Rules

If you are a California lawyer, you have probably heard by now that, on November 1, 2018, a new set of Rules of Professional Conduct will take effect. While it is clear that California's new Rules of Professional Conduct apply to in-house counsel just as they do to outside counsel, their application to in-house counsel is not always straightforward. Below are a few of the new rules that are of particular note to in-house practitioners, along with a brief explanation of how those rules are likely to apply in a corporate environment.

Mandatory "Up-the-Chain" Reporting [Rule 1.13]

One of rules particularly applicable to in-house lawyers is Rule 1.13, which governs situations where the client is an organization. As compared to the previous version of this rule (Rule 3-600), this revised rule imposes much broader reporting requirements on lawyers representing organizations. Where the former rule provided for discretionary reporting, the new rule makes it *mandatory* for a lawyer to report to a "higher authority in the organization" any conduct that the lawyer knows or reasonably should know is (1) a violation of a legal obligation to the organization or a violation law; and (2) is likely to result in substantial injury to the organization. Serious violations and persistent misconduct may warrant reporting to the "highest authority" in the organization which, in many instances, will be the Board of Directors.

Duty to Supervise (Rules 5.1, 5.2, and 5.3)

The new rules also impose much more robust obligations on lawyers with respect to supervising lawyers, paralegals, and other legal staff. In-house lawyers in managerial or supervisory roles must make "reasonable efforts" to ensure all company lawyers and legal staff are compliant with the new rules, including putting policies and procedures in place to ensure compliance. These measures may include designating an in-house "ethics counsel" whom lawyers can go to with legal ethics questions and offering CLE courses on legal ethics to in-house legal staff.

Sex with "Clients" [Rule 1.8.10]

Not surprisingly, one of the most talked-about changes to California's ethics rules relates to rules governing sexual relations with clients. Unlike the former rule which permitted a lawyer to have sex with a client provided it was not a *quid pro quo* situation or the result of coercion, intimidation, or undue influence, the new rule expressly *prohibits* sex with clients with very limited exceptions. Those exceptions include a consensual sexual relationship which pre-dated the representation. This rule, which expressly applies to "inside counsel" as well as outside counsel, provides that the "client" for in-house lawyers is any person in the organization who "supervises, directs, or regularly consults with that lawyer concerning the organization's legal matters."

All California lawyers, including in-house and outside counsel alike, are encouraged to review the full set of new Rules of Professional Conduct, which are available on the State Bar's website: <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/New-Rules-of-Professional-Conduct>

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