



Legal Ethics Spotlight: Technology, Confidentiality, and Professional Integrity

Hon. Paul Burdick (Ret.)

Hon. Evelio Grillo (Ret.)

Hon. Leslie Landau (Ret.)

ADR Services, Inc. 5th Annual MCLE Day

January 16, 2025



Ethics

Agenda

- 1. Artificial Intelligence & Technology**
- 2. Confidentiality in Mediation**
- 3. Rule 8.3: The “Snitch Rule”**

Part I

Hon. Leslie Landau (Ret.)

Artificial Intelligence & Technology

What is Generative AI?

In ChatGPT's own words



What is Generative AI?



Generative AI is a type of artificial intelligence that creates new content, such as text, images, audio, video, or even software code, by learning patterns and structures from existing data. It uses sophisticated machine learning models, especially **neural networks**, to generate outputs that resemble human-created content.



- **AI predicts based on what it has learned**
- **AI has no fact-checking or principles: it makes stuff up**

The Source of the Ethical Challenges in Generative AI

Data Use

Generative AI uses mountains of data to train the AI and to obtain output, but the competing AI systems often don't clearly explain how that data is used for training and output.

Overreliance

Generative AI output imitates human responses that seem confident, complete, and accurate on their face, creating the risk of overreliance.

Ethical Implications

Multiple areas of professional ethics may be implicated in the use of generative AI.

The Duty of Confidentiality

(Bus. & Prof. Code, § 6068, subd. (a); CRPC 1.6 CRPC 1.8.2)

Inquiries or prompts used in generative AI that contain confidential client information might be shared with third parties or used for other purposes by the platform.




Before inputting any confidential client information:

- Consult with IT professionals or cybersecurity experts on confidentiality and security protections.
- Review the Terms of Use of the program.
- Anonymize client information and avoid details that could be used to identify the client.

Duties of Competence and Diligence

(CRPC 1.1, 1.3)

Generative AI outputs may include false, inaccurate, or biased information (e.g., machine bias and selection bias).



If AI-generated outputs are used in representing a client:

- Scrutinize the outputs for accuracy and bias, and
- Use the outputs only as a starting point, to be supplemented by human-performed research and critical, human-performed analysis and review.

Duty to Comply with the Law

(Bus. & Prof. Code, § 6068(a); CRPC 8.4, 1.2.1)

The law governing the use of generative AI is in a state of flux, with many emerging legal issues, including AI-specific laws, privacy laws, intellectual property laws, cybersecurity concerns, and cross-border data transfer laws.



You must keep abreast of such developments, because a lawyer must comply with the law and cannot counsel a client to engage, or assist a client in conduct that the lawyer knows is a violation of any law, rule, or ruling of a tribunal when using generative AI tools.

Duty to Supervise Lawyers and Nonlawyers, Responsibilities of Subordinate Lawyers

(CRPC 5.1, 5.2, 5.3)

As the foregoing points make obvious, managerial and supervisory lawyers should:



- Establish clear policies regarding the permissible uses of generative AI in keeping with professional responsibilities, and
- Make reasonable efforts to ensure that the firm adopts and implements those measures.

Communication Regarding Generative AI Use

(CRPC 1.4, 1.2)

CRPC of Professional Conduct 1.4 describes and defines the duties involving client communication, and also defines the ethical limitations on an attorney's duty to communicate.


Evaluate your duty to communicate with the client when you decide to use Generative AI and consider:

- Disclosing to the client that you intend to use generative AI in the representation,
- Explaining how the technology will be used, and the benefits and risks of such use, and
- Reviewing any applicable client instructions or guidelines that may restrict or limit the use of generative AI.

Charging for Work Produced by Generative AI and Generative AI Costs

(CRPC 1.5; Bus. & Prof. Code, §§ 6147-6148)

Under CRPC 1.5, “A lawyer shall not make an agreement for, charge, or collect an unconscionable or illegal fee.”



The Guidelines suggest:

- You may charge for actual time spent (e.g., crafting or refining generative AI inputs and prompts, or reviewing and editing generative AI outputs).
- You may not charge hourly fees for the time saved by using generative AI.
- You may charge for the costs associated with generative AI.
- Your fee agreement, which explains the basis for all fees and costs, should also specifically explain those associated with the use of generative AI.

Candor to the Tribunal; and Meritorious Claims and Contentions

(CRPC 3.1, 3.3)

Some judges and courts either have enacted or are considering enacting court rules or standing orders regarding the use of generative AI.



The US Court of Appeal for the Fifth Circuit has proposed a rule requiring the lawyer to certify:

- No generative AI was used in drafting the document presented for filing, or,
- To the extent generative AI was used, that all generated text, including all citations and legal analysis, has been reviewed for accuracy.

Check whether any such rule has been implemented in the jurisdiction of your representation.

Professional Responsibilities Owed to Other Jurisdictions

(CRPC 8.5)



The Guidelines advise lawyers to analyze the relevant laws and regulations of each jurisdiction in which a lawyer is licensed to ensure compliance with such rules.

Cautionary Tales:

***Mata v. Avianca, Inc.*, 678 F.Supp.3d 443 (S.D.N.Y. June 22, 2023):**

Attorneys used AI to write brief. The brief cited imaginary cases and holdings, and even when advised the cases could not be found, counsel certified their validity without reviewing them. Rule 11 sanctions issued.

▶ **“The filing of papers ‘without taking the necessary care in their preparation’ is an “abuse of the judicial system” that is subject to Rule 11 sanction.”**

▶ **“A fake opinion is not ‘existing law’ and citation to a fake opinion does not provide a non-frivolous ground for extending, modifying, or reversing existing law, or for establishing new law. An attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system.”**

▶ **“Respondents advocated for the fake cases and legal arguments contained in the Affirmation in Opposition after being informed by their adversary's submission that their citations were non-existent and could not be found....”**

Cautionary Tales:

Park v. Kim, 91 F.4th 610 (2d Cir. 2024)

Attorney cited non-existent case generated by AI. Attorney referred to Court's Grievance Panel and ordered that copy of opinion be provided to client.

Attorney's "reply brief in this case includes a citation to a non-existent case, which she admits she generated using the artificial intelligence tool ChatGPT. Because citation in a brief to a non-existent case suggests conduct that falls below the basic obligations of counsel, we refer Attorney ... to the Court's Grievance Panel, and further direct Attorney ... to furnish a copy of this decision to her client...."

"At the very least, the duties imposed by Rule 11 require that attorneys read, and thereby confirm the existence and validity of, the legal authorities on which they rely. Indeed, we can think of no other way to ensure that the arguments made based on those authorities are "warranted by existing law," Fed. R. Civ. P. 11(b)(2), or otherwise "legally tenable."

Attorney's "submission of a brief relying on non-existent authority reveals that she failed to determine that the argument she made was "legally tenable." The brief presents a false statement of law to this Court, and it appears that Attorney ... made no inquiry, much less the reasonable inquiry required by Rule 11 and long-standing precedent, into the validity of the arguments she presented.

Resource:

See State Bar Standing Committee on Professional Responsibility and Ethics, Practical Guidance for the Use of generative AI in the Practice of Law:

<https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>



Zoom Follies

Be aware of ethical issues arising out of use of remote platforms, including:



Client Confidentiality

(CRPC 1.6)

“A lawyer shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) unless the client gives informed consent....”

- Failure to mute when discussing with client can breach duty of confidentiality in client communications
- Error in screen sharing documents can lead to breach of duty

The Duty to Maintain Respect for the Court

(Bus. & Prof. Code §6068(b))

It is the duty of an attorney to “maintain the respect due to the courts of justice and judicial officers.”



- Remember, although you may be in your living room, you (and client) actually are in court.
- Beware the hazards of using personal (and especially shared family computers) for remote hearings.





Inappropriate Names

A photograph of a courtroom with dark wood paneling and several rows of wooden chairs with dark blue upholstery. The image is partially obscured by a white diagonal shape that contains the text.

Respect for the Court Includes Appropriate:

- **Attire**
- **Privacy**
- **Location, location, location.**



Location....



Location!

Email: Convenience v. Crisis

CRPC 3.5

No ex parte communications with judicial officer

- Beware the Hazards of Reply All
- Informality can lull you into including arbitrator or court (especially when using ADR private judge or arbitrator)

CRPC 1.6

Client confidentiality

- Beware the Hazards of forwarding documents
- Forwarding an email in a long chain risks inadvertently including confidential communications or work product.

CRPC 4.4

Duty when inadvertently receive privileged information

- CRPC 4.4
- *Rico v. Mitsubishi* (2007)
42 Cal.4th 807

Part II

Hon. Paul Burdick (Ret.)

Mediation Confidentiality

What is Mediation?


Defined in Evidence Code Section 1115

- Neutral person,
- Facilitates communication between disputants,
- To reach mutually acceptable agreement.

Or, more informally:

“An information management process...to resolve conflicts”.

PURPOSE OF MEDIATION CONFIDENTIALITY PROVISIONS



To encourage the use of mediation by promoting a candid and informal exchange regarding events in the past. . . . This frank exchange is achieved only if the participants know that what is said in the mediation will not be used to their detriment through later court proceedings and other adjudicatory processes.

(See, *Simmons v. Ghaderi* (2008) 44 Cal. 4th 570,578)

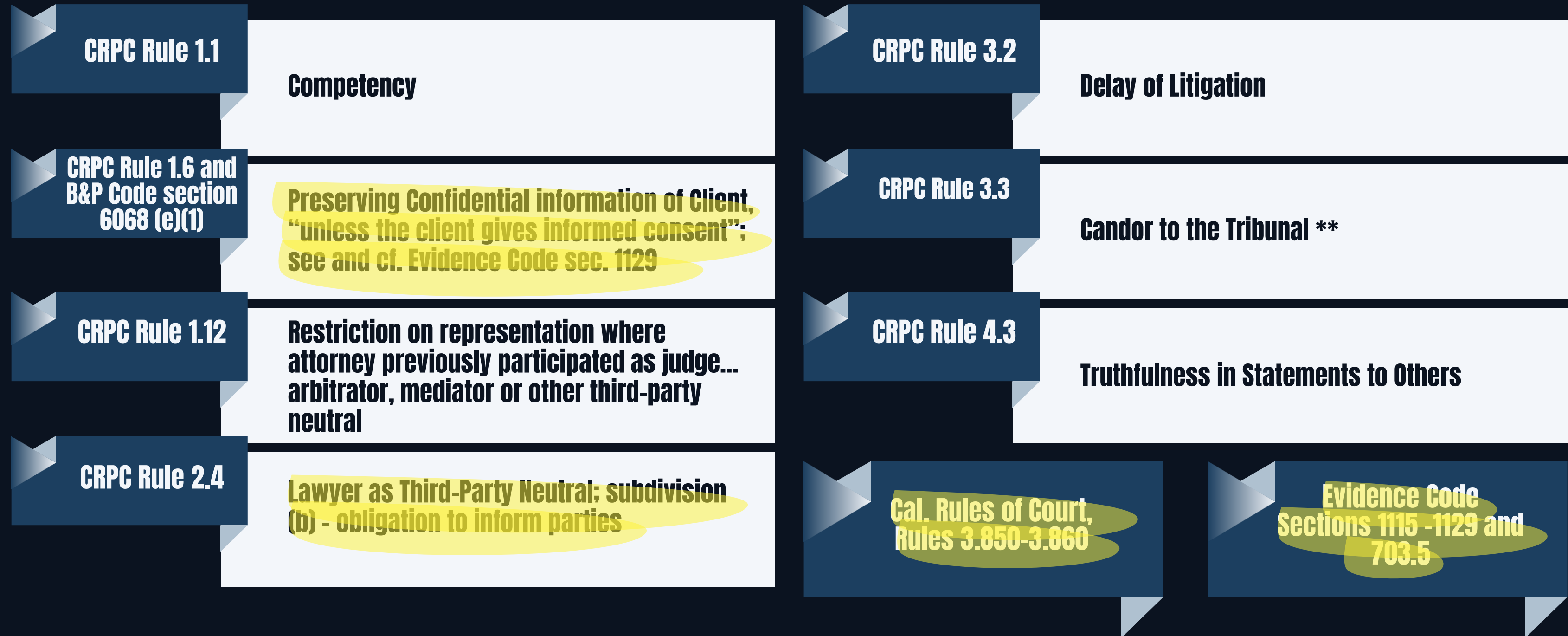
“MEDIATION CONFIDENTIALITY”

Codified in Evidence Code
Sections 1115-1129 and 703.5



The statutory scheme is “broadly construed” and “strictly applied” by the appellate courts to preserve confidentiality of the mediation process and promote the goals of mediation and settlement of disputes.

Ethical standards and rules of conduct for mediators and attorney participants



CRPC Rule 2.4 - Lawyer as Third-Party Neutral



Lawyer/Mediator Shall Clarify Role

(See for example, ADR form “Clarification of the Role of Third-Party Neutral”).

Court-Connected Mediation Rules

(CRC Rules 3.850 -3.860)


California Rules of Court 3.850 through 3.860 apply to court-connected mediations.



These Rules only apply if you were:

- (1) selected from “a superior court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within that court's mediation program,” or
- (2) “agreed to mediate a general civil case pending in a superior court after being notified by the court or the parties that he or she was recommended, selected, or appointed by that court or will be compensated by that court to mediate a case within that court's mediation program” (See Cal. Rules of Court, Rule 3.851.)

Important Requirements of the Rules of Conduct for Mediators

- 
- Protect Voluntary Participation and Self Determination of Parties (CRC Rule 3.853);
 - Comply With and Explain Confidentiality of Mediation Proceedings (CRC Rule 3.854(a) and (b) - (See for example ADR form Mediation Confidentiality Agreement);
 - Observe and Maintain Caucus Specific Confidentiality (CRC Rule 3.854(c);
 - Mediator may not use information acquired in confidence during mediation, outside the mediation or for personal gain (CRC Rule 3.854(d);
 - Remain Impartial, Make Reasonable Disclosures, and Withdraw When Required (CRC 3.855);
 - Must be Competent to Mediate Particular Matter (CRC Rule 3.856);
 - Conduct Process Impartially and Maintain Procedural Fairness (CRC Rule 3.857);
 - Disclose all Compensation & Avoid Gifts (CRC Rule 3.859);
 - Record Attendance of all Participants (CRC Rule 3.860);
 - Agreement to Disclosure (CRC Rules 3.860(b), 3.871)


Evidence Code

Section 1119(c)

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

Confidentiality - Evidence Code Section 1119

- “No evidence of anything said”, “written”, or any admissions made,
- For the purpose of, during the course of, or pursuant to mediation,
- Is admissible or subject to discovery,
- And disclosure shall not be compelled.



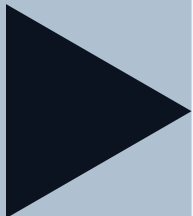
ALL communications, negotiations, or settlement discussions by and between participants in the course of the mediation... shall remain confidential (EC 1119(c)).

Mediator as a Witness

(Evidence Code Section 703)

Mediator not competent to testify (e.g. provide a declaration) in any subsequent civil proceeding – Except:

- Statement or conduct that could give rise to civil or criminal contempt;
- Constitute a crime;
- Subject of investigation of State Bar or Commission on Judicial Performance



See, *Foxgate Homeowner's Ass'n, Inc. v. Bramalea Calif., Inc.* (2001) 26 Cal 4th 1, 17 which holds that the mediation confidentiality statutes preclude evidence of counsel's bad-faith conduct, delaying tactics, violation of court orders, and acts constituting violations of B&P Code section 6103, which occurred during the course of court-ordered mediation, on a motion for imposition of sanctions brought under CCP section 128.5.

Evidence Code Section 1127



Mandatory Attorney's fees and costs for compelling mediator to testify or produce writing if determined testimony inadmissible.

Exceptions

(Evidence Code Section 1120)

Evidence otherwise admissible or subject to discovery (EC sec. 1120 (a));

(e.g. Witness testimony - even though previously summarized in a “witness statement” prepared for and used during mediation. The statement is protected, but the witness’ testimony is not precluded. See, Rojas v. Superior Court (2004) 33 Cal App 4th 407 at 424,fn.8)

Confidentiality provisions do not make inadmissible (EC sec. 1120 (b) (1-4))

- An agreement to mediate a dispute;
- An agreement not to take a default or to extend time;
- Disclosure of the fact that a mediator has served, is serving, or will serve or has been contacted to serve;
- Declarations of disclosure required by Family Law Code 2104 and 2105.

EVIDENCE CODE SECS. 1122 & 1123 EXCEPTIONS


A written Settlement Agreement made in the course of, or pursuant to a mediation, is not inadmissible or protected from disclosure if any of the following is shown:

- All persons participating (including mediator) expressly agree (EC sec. 1122(a)(1));
- Where writing “was prepared by fewer than all participants, those participants expressly agree... to its disclosure, and the... writing “does not disclose anything said or done... in the course of the mediation” (EC sec. 1122(a)(2)).

Where the writing is a settlement agreement, signed by the settling parties, and any of the following are shown:

- The agreement provides it is admissible or subject to disclosure (EC sec. 1123(a));
- The agreement provides it is enforceable or binding (EC sec. 1123 (b));
- The agreement is used to show fraud, duress, or illegality that is “relevant to an issue in dispute” (EC sec. 1123(d)).

PROHIBITION ON SUBMISSION OF MEDIATOR'S REPORT



Per Evidence Code sec. 1121 neither a mediator, or anyone else, may submit to a court, or other adjudicative body,

- A Report
- Assessment
- Evaluation or
- Recommendation... (e.g. a “Mediator’s Proposal”)

Unless all parties expressly agree otherwise.

HYPOTHETICAL 1

Days before a scheduled mediation, client and his attorneys meet in preparation for mediation at which time Client and Attorneys agree that not less than two-million dollars will be taken to settle Client's lawsuit against his former business partners, which will require Client to transfer his ownership stake in a valuable clothing line.

After hours of exhaustive mediation negotiations, Client is informed that defendants will not pay more than 1.25 million.

In their private break-out sessions, Attorneys attempt to coerce Client to accept the 1.25 million. Client refuses. He explains he is tired, hungry, and ill and he leaves the mediation to consult with family. His Attorneys call him and tell him he is required to return. Upon his return his Attorneys tell him he is being "greedy", and continue to "harass, brow-beat and coerce" Client to accept the offer. They threaten to withdraw from representation for the imminently pending trial.

They promise that if he accepts the offer they will substantially reduce their pending \$200,000 legal bill. Finally, at midnight, he is exhausted and beaten down and signs a binding term sheet which Attorneys do not adequately explain to him. Ultimately attorneys do not reduce their fee as promised.

Client sues Attorneys for legal malpractice. The attorney-client privilege is therefore waived.




Does Evidence Code sec. 1119 prohibit Client from introducing testimony of all these discussions and acts occurring in private between Client and his Attorneys?

see *Cassel v. Superior Court* (2011) 51Cal. 4th 113

WHEN DOES MEDIATION END?

“For purposes of confidentiality” a mediation ends when any one of five conditions specified in Evidence Code sec. 1125 is satisfied.



Query: What is the effect of ending the mediation, on the confidentiality protections of the Evidence Code?

See Evidence Code sec 1126: “.... Anything inadmissible, protected from disclosure, and confidential before mediation ends ... shall remain inadmissible, protected from disclosure, and confidential to the same extent after mediation ends”

HYPOTHETICAL 2

In a clear liability personal injury case involving serious bodily injuries, counsel for the parties agree to early mediation before defendant is required to file an Answer.

During a joint session plaintiff's counsel asks defense counsel what the policy limits are. Defense counsel responds "the liability limits are \$500,000".

In a separate caucus with mediator and defense counsel, the claims adjuster informs the mediator the defendant/insured has an umbrella policy with another carrier providing an additional One-Million dollars in coverage. Defense counsel tells the mediator "I'm not authorized to disclose that at this point. I have not been retained by that carrier – please keep that confidential".

Mediator then meets in separate caucus with plaintiff's counsel who laments that the case has a value greater than \$500,000. Counsel says, "be that as it may, my client has authorized me to demand the policy limits of \$500,000".



- **Has defense counsel committed an ethical violation?**
- **Has plaintiff's counsel committed an ethical violation?**
- **What are the mediator's ethical obligations?**


HYPOTHETICAL 3

Mediation has been scheduled after extensive discovery in a serious personal injury case. It is uncontested that the 40-year-old plaintiff, husband and father of two, is totally disabled, will incur substantial future medical expense, and suffer loss of future earnings in excess of a million dollars over his remaining work life expectancy. Plaintiff's mediation brief summarizes all the significant losses and demands \$7.5 million


One week prior to the mediation, plaintiff informs his counsel that he has just been diagnosed with advanced prostate cancer and that his oncologist has informed him he must put his affairs in order - that he is not likely to live another 12 months. Plaintiff tells his counsel, "I have no life insurance, my wife and kids need this money from my personal injury case – get it settled for as much as you can".

In the initial separate caucus with the mediator, plaintiff's counsel maintains his client's confidence, says nothing of the cancer diagnosis, and the mediator confirms that the demand to be conveyed is 7.5 million.

The demand is conveyed and defense counsel responds with an opening offer of 2.5 million, acknowledging the substantial exposure given the future medical care and earnings loss. It appears to the mediator the case is likely headed toward a \$5 million settlement.

- 
- **Does Plaintiff's counsel have an ethical obligation to inform defense counsel of the recently discovered cancer diagnosis?**
 - **If plaintiff's counsel informs the mediator of the issue but instructs the mediator to keep the information confidential, what are the mediator's ethical obligations?**

RULES OF PROFESSIONAL CONDUCT AND ETHICAL IMPLICATIONS TO CONSIDER RELATING TO HYPOTHETICALS #2 AND #3

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- CRPC RULE 1.1 – Competency
 - CRPC RULE 1.6 – Protecting Client Confidentiality
 - B&P Code Sec. 6068(e)(1) - Attorney/Client Privilege
 - CRPC RULE 4.1 – Truthfulness in Statements to Others
 - CRPC RULE 8.3 – Reporting Professional Misconduct
 - RULE 8.4(c) - Conduct Involving Dishonesty/Deceit

Part III

Hon. Evelio Grillo (Ret.)

Rule 8.3: The “Snitch Rule”

What Is The Snitch Rule?

There Are Two Snitch Rules:

BPC Section 6090.8

Rule of Court 8.3

The Source of the Ethical Challenges in Generative AI

BPC Section 6090.8

BPC 6090.8 addresses reporting requirements imposed on members of the state bar when a lawyer knows that another lawyer has engaged in, or conspired to engage in, “seditious conspiracy,” “treason” or “rebellion or insurrection.”

**This presentation will be limited
to Rule of Court 8.3**



Rule of Court 8.3

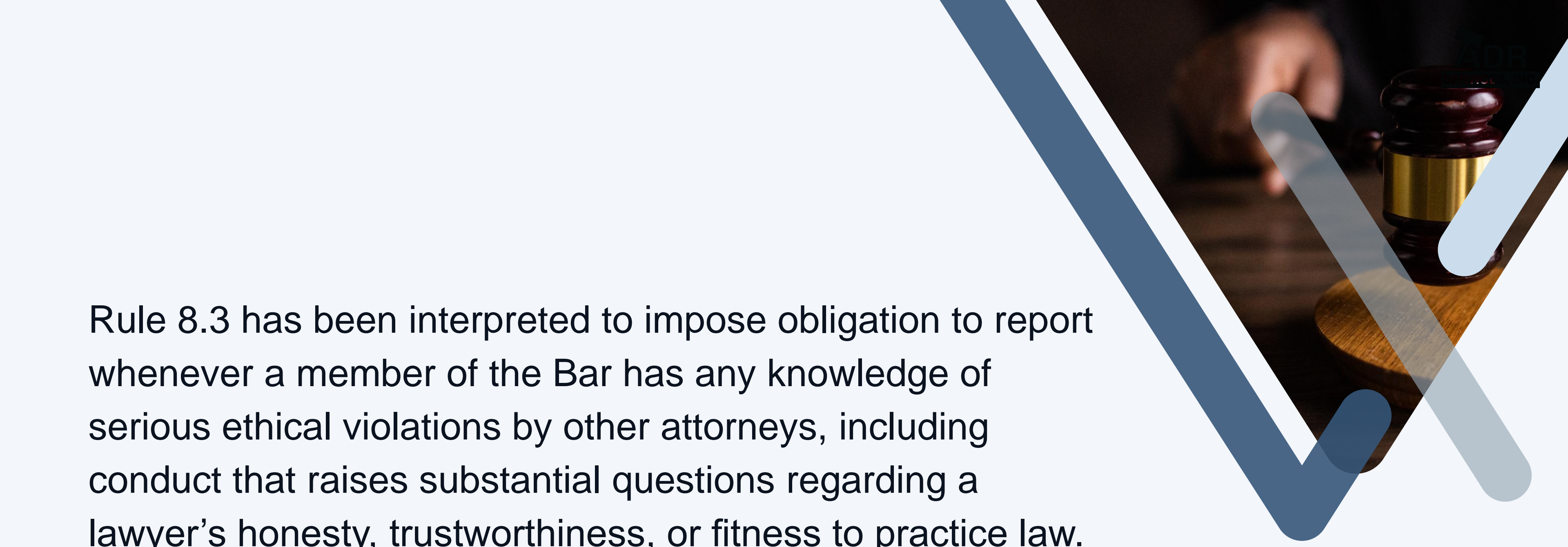
Rule of Court 8.3 establishes reporting requirements when a member of the bar knows of credible evidence that another lawyer has engaged in any conduct “that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer. Effective as of August 1, 2023, Rule 8.3 is the California Supreme Court’s response to criticism of the state bar’s oversight of Thomas Girardi, an attorney who was convicted of four counts of wire fraud for stealing \$15 million in settlement funds from his clients.

Rule 8.3 Reporting Obligation

Rule 8.3 Obligates California-licensed attorneys to inform the State Bar of California when they know of credible evidence that another lawyer has engaged in any conduct “that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects defined as follows:”.



- (a) a criminal act];
- (b) conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; or
- (c) misappropriation of funds or property.



Rule 8.3 has been interpreted to impose obligation to report whenever a member of the Bar has any knowledge of serious ethical violations by other attorneys, including conduct that raises substantial questions regarding a lawyer's honesty, trustworthiness, or fitness to practice law.

Read broadly, Rule 8.3 covers not only criminal acts, but conduct and serious ethical violations.

Issues Re Reportable Conduct:

Criminal Acts: How Broad is the Coverage?

- Most felonies would almost certainly constitute conduct “that raises a substantial question as to [a] lawyer’s honesty [and], trustworthiness.”
- Misdemeanors?
- Misdemeanors Involving Moral Turpitude?

Conduct Involving Dishonesty, Fraud, Deceit Etc.

- Completely Undefined by the Rule.
- Can Cover Serious Misrepresentation to Court.
- Not So Clear in Business Disputes.

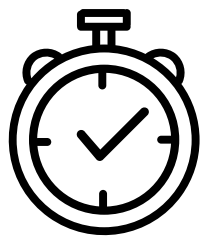
Misappropriation of Funds or Property:

- Undefined by Rule 8.3 but Clearly Covers Trust Account or Client Property Misuse.

When to Report:



Professional misconduct must be reported without “undue delay.”



Undue Delay = Misconduct must be reported as soon as attorney reasonably believes that reporting “will not cause material prejudice or damage to the interests of a client” of the attorney or the attorney’s law firm.

To Whom to Report:

The State Bar of California.

Alternatively, to a tribunal with jurisdiction to investigate or act upon such misconduct.

Alternate reporting of misconduct may arise during pending litigation if the particular tribunal has the power to ‘investigate or act upon’ the alleged misconduct.

Exceptions and Exclusions

Reporting is not required under the following circumstances:



- Confidential client information.
- Information subject to the attorney-client privilege and other privileges.
- Information subject to “mediation confidentiality”
- Information obtained by the attorney while participating in a substance use or mental health program.
- Certain other “confidential information.”

Consequences for Failure to Report or Wrongful Reporting:

Failing to report conduct required to be reported by Rule 8.3 or making a false or malicious report or complaint under Rule 8.3 may be subject to disciplinary action by the State Bar.

False and malicious reports or complaints may also result in criminal penalties.



The scope and reach of Rule 8.3 are broad and undefined. To date there are no reported California cases interpreting the rule. Look to the application of Rule 8.3 or similar rules and statutes in other jurisdictions for guidance.

See attached [State Bar publication “Rule 8.3 Reporting Scenarios,” State Bar of California Office of Professional Competence.](#)

Discussion of Rule 8.3 Reporting Scenarios:

The hypotheticals presented here are adapted from “Rule 8.3 Scenarios,” a State Bar publication issued by the Office of Professional Competence. Please do not read “Rule 8.3 Scenarios” before our online exercise is completed.



HYPOTHETICAL 1

Larry, who represented a defendant in a civil matter, receives a call from his client telling him that the plaintiff keeps calling him and accusing him of failing to make the payment that is due on their settlement agreement. Larry sent the settlement check to plaintiff's counsel, Tom, six weeks ago. Larry calls Tom and asks whether there is any reason for the delay in distributing funds to the plaintiff. During that discussion, Tom reveals that, for convenience, he deposited the settlement check into his firm's operating account in order to cover the firm's rent for two months, which was equal to Tom's contingency fee in the case, and that he planned to distribute the plaintiff's share of the settlement funds to the plaintiff, just after the second rental check cleared.

**Report Or Not Report?**

HYPOTHETICAL 2

Karen represents Pam in a dispute with her employer. Pam is also going through a divorce, but she is represented by a different attorney, Angela, in the divorce proceedings. Pam complains to Karen that Angela has failed to return Pam's calls or emails for two weeks, and Pam is growing anxious to learn whether there are any new developments in the divorce case. Should Karen report Angela?

**Report Or Not Report?**

HYPOTHETICAL 3

Sam has witnessed Fred, an attorney at his firm, tell a client that he missed a deadline and requested an extension from the court due to a recent family death. Sam knows, however, that Fred was on vacation. He is uncertain about his reporting obligations under rule 8.3. Therefore, he hires Jane, an attorney at a different firm, to consult Jane and receive advice about whether Fred's dishonesty to his client and to the court must be reported. While consulting with Sam, Jane determines that Fred's dishonesty raises a substantial question as to Fred's honesty and trustworthiness.



Is Jane required to report Sam or Fred?

HYPOTHETICAL 4

Jacob represents Alicia in divorce proceedings against Todd, who is also an attorney. Jacob believes that Todd mistreated Alicia during the marriage, and therefore believes that Todd should suffer some consequence for his mistreatment of Alicia. Jacob has no reason to believe that Todd's income is any higher than what he reported in the divorce proceedings and Jacob's client told him that she has no evidence that Todd's current income is higher than what he reported. Jacob's discovery efforts also failed to reveal any evidence that Todd misrepresented his current income in the divorce proceedings. However, Jacob thinks that the State Bar's investigators might be able to find something Jacob was unable to find.

For these reasons, Jacob wants to file a State Bar complaint alleging that Todd violated Business and Professions Code, section 6068, subdivision (d) and Rules 3.3(a) and 8.4(c) by intentionally misrepresenting his income to the court during the divorce proceedings. Jacob asserts that he is complying with his reporting obligations under Rule 8.3.



May Jacob file a report under Rule 8.3?

HYPOTHETICAL 5

Dimitri represents a plaintiff in litigation against Bob's client. Neither Bob nor his client, the defendant, appeared for the defendant's properly noticed deposition, which was scheduled for 10:00 a.m. at Dimitri's office on the west side of Los Angeles, CA. Due to the nonappearance, Dimitri filed a motion seeking discovery sanctions. In opposition to the motion, Bob filed a response, in which he stated that his mother who lives out of state was rushed to the hospital in a medical emergency, so he took a last-minute flight out of state, early in the morning prior to the scheduled deposition, and was unable to notify opposing counsel that he and his client could not attend the deposition. However, an associate attorney, who works for Dimitri, saw Bob walking into a mediator's office in downtown Los Angeles at 10:00 a.m., the same day of the deposition.



Where should Dimitri report if he determines that reporting is appropriate?

HYPOTHETICAL 6

Barbara and Dan are opposing counsel. Barbara represents the plaintiff in a civil litigation matter. Dan represents the defendant. Dan believes his client is telling the truth when his client says that the contract that was signed in 2020 was rescinded by later agreement between the parties. Nonetheless, the plaintiff's complaint seeks to enforce the 2020 contract. At a hearing on a demurrer to the complaint, Barbara argues that the 2020 contract, which is attached as an exhibit to the complaint, is in full force and effect between the plaintiff and defendant.



Should Dan report Barbara?

HYPOTHETICAL 7

Jill and Darrell are at a party. Jill asks Darrell if he has heard anything about their old law school friend, Jack. Darrell tells Jill that he heard through the grapevine that Jack had been running a Ponzi scheme for years and is now hiding from investors who are angry at the loss of their money. He thinks Jack must have hidden investor money in an offshore account and believes Jack is living outside the country somewhere.



Is Jill required to report Jack?

HYPOTHETICAL 8

Manuel is the lead trial lawyer in very contentious litigation. Manuel knows of credible evidence that opposing counsel, Liza, made false statements in a declaration filed with the court. However, Manuel and Liza are in settlement negotiations, and Manuel is concerned that reporting Liza now under his Rule 8.3 obligations would disrupt those negotiations, which will be favorable to Manuel's client's demands.



Must Manuel report Liza's dishonesty immediately even if it has an adverse effect on his clients case?

Thank You



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