

# STAY IN YOUR LANE

## Know Your Limits and Your Friends: Practice and Referral Competency

Presented by: Team 7 – Inn of Court

Topic: Practice & Referral Competency

Date: April 15, 2025

MCLE Credit: 1.25 Hours (Legal Ethics)

*The Anthony M. Kennedy Inn of Court certifies that this activity has been approved for MCLE credit by the State Bar of California.*

---

### I. OVERVIEW

This presentation examines the ethical dangers lawyers face when they overstep their skill set, refer cases to unqualified counsel, delegate tasks without oversight, or fail to meet standards of cultural and linguistic competency.

### II. KEY ISSUES & SCENES

#### 1. Selling a Practice & Unethical Referrals

Robin Runn (Robin) hastily refers cases without proper vetting of receiving attorneys, including to Jacklynn Matlock (Jacklynn), with pending State Bar issues

- Robin fails to provide adequate case information to Guy Green, instructing him to “submit on the pleadings” without factual background
- Key Risk: Violating duties under California Rules of Professional Conduct (Cal. Rules of Prof'l Conduct) 1.1, 1.17, and Cal. Bus. & Prof. Code § 6102 (disciplinary proceedings)

## **2. Matters Outside Competence**

Jacklynn accepts complex licensing matters, OSHA violations, and immigration issues, even though she lacks recent experience

- Jacklynn falsely claims expertise and resources (multilingual staff) she does not possess
- Jacklynn accepts a personal injury case purely for the potential insurance payout, neglecting to evaluate her own competence
- Key Risk: Engaging in matters without sufficient skill, knowledge, or preparation – Cal. Rules of Prof'l Conduct 1.1(a)-(b)

## **3. Delegation & Use of AI**

Guy Green is asked to rely on AI-generated compliance analysis without supervision

- Firm uses open-source AI tools for regulatory reviews without consideration of confidentiality
- Key Risk: Breach of Cal. Rules of Prof'l Conduct 5.1 (responsibilities of supervisory lawyers), 1.6 (confidentiality), and potential ethical violations under State Bar Formal Opinion No. 2020-203

## **4. Language Barriers and Immigration**

Use of Google Translate for a non-English speaking client (Sigrit) facing criminal and immigration consequences

- Failure to properly advise on the serious immigration consequences of a DUI plea
- Key Risk: Inadequate communication – Cal. Rules of Prof'l Conduct 1.4; Ignoring *Padilla v. Kentucky* requirements for immigration advisement

## **5. Improper Court Appearances**

Guy Green submits “on the pleadings” without knowing the facts or law

- Guy may face sanctions and malpractice for incompetent representation.
- Key Risk: Violations of duty of diligence (Cal. Rules of Prof'l Conduct 1.3) and competence (Cal. Rules of Prof'l Conduct 1.1), potential CCP §128.7 sanctions, and Cal. Bus. & Prof. Code § 6068(c) - maintaining only legal or just actions

# **III. RULES & AUTHORITIES**

## **1. Ethical Rules**

### **Cal. Rules of Prof'l Conduct 1.1 – Competence**

“A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.”

“‘Competence’ in legal services means to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service.” (Cal. Rules of Prof'l Conduct, rule 1.1.)

### **Cal. Rules of Prof'l Conduct 1.3 – Diligence**

“A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.” (Cal. Rules of Prof'l Conduct, rule 1.3.)

**Cal. Rules of Prof'l Conduct 1.4 – Communication with Clients**

“A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent is required; (2) reasonably consult with the client about the means by which to accomplish the client’s objectives in the representation; (3) keep the client reasonably informed about significant developments relating to the representation...; (4) promptly comply with reasonable requests for information from the client; and (5) consult with the client about any relevant limitation on the lawyer’s conduct...” (Cal. Rules of Prof'l Conduct, rule 1.4.)

**Cal. Rules of Prof'l Conduct 1.6 – Confidentiality of Information**

“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, or the disclosure is permitted by paragraph (b) of this rule.” (Cal. Rules of Prof'l Conduct, rule 1.6(a).)

**Cal. Rules of Prof'l Conduct 1.17 – Sale of a Law Practice**

“All or substantially all of the law practice of a lawyer, living or deceased, including goodwill, may be sold to another lawyer or law firm subject to all the following conditions: (1) Fees charged to clients shall not be increased solely by reason of the sale... (2) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by Business and Professions Code section 6068, subdivision (e)(1), then: (i) if the seller is deceased, or has a conservator or other person acting in a representative capacity, and no lawyer has been appointed to act for the seller..., then prior to the transfer; (A) the purchaser shall cause a written notice to be given to each client...” (Cal. Rules of Prof'l Conduct, rule 1.17.)

**Cal. Rules of Prof'l Conduct 5.1 & 5.3 – Responsibilities of Managerial/Supervisory Lawyers and Nonlawyer Assistants**

“A lawyer who individually or together with other lawyers possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm comply with these rules and the State Bar Act.” (Cal. Rules of Prof'l Conduct, rule 5.1(a).)

“With respect to a nonlawyer employed or retained by or associated with a lawyer... a lawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” (Cal. Rules of Prof'l Conduct, rule 5.3(b).)

**2. Case Law**

*Padilla v. Kentucky* (2010) 559 U.S. 356

“We now hold that counsel must inform her client whether his plea carries a risk of deportation. Our longstanding Sixth Amendment precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less.” (Padilla, 559 U.S. at 374.)

*People v. Patterson* (2020) 49 Cal. App. 5th 886

“A defendant can establish ineffective assistance of counsel by demonstrating counsel’s

failure to research and advise a defendant on the immigration consequences of a plea, as well as by showing counsel’s affirmative misadvice regarding those consequences.” (People v. Patterson, 49 Cal. App. 5th at 892.)

*In re O.S.* (2002) 102 Cal.App.4th 1402

“The use of an unqualified interpreter in court proceedings is tantamount to no interpreter at all, and use of an unqualified interpreter constitutes a denial of due process.” (In re O.S., 102 Cal.App.4th at 1411.)

### **3. Statutory Authorities**

#### **Cal. Bus. & Prof. Code § 6068(e)**

“It is the duty of an attorney to... maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” (Cal. Bus. & Prof. Code, § 6068(e)(1).)

#### **Cal. Bus. & Prof. Code § 6068(c)**

“It is the duty of an attorney to... counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just.” (Cal. Bus. & Prof. Code, § 6068(c).)

#### **Cal. Bus. & Prof. Code § 6102**

“Upon the conviction of an attorney of a felony or misdemeanor, involving moral turpitude, the Supreme Court shall summarily disbar the attorney if the conviction is a felony under the laws of California or of the United States which meets [certain] criteria...” (Cal. Bus. & Prof. Code, § 6102(c).)

#### **Cal. Code Civ. Proc. § 128.7**

“By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances... (1) It is not being presented primarily for an improper purpose... (2) The claims, defenses, and other legal contentions therein are warranted... (3) The allegations and other factual contentions have evidentiary support...” (Cal. Code Civ. Proc., § 128.7(b).)

## **IV. RESOURCES**

### **Personal Competency Resources**

- California State Bar Competence Issues in Legal Practice  
<https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Ethics-Resources>
- ABA Center for Professional Responsibility: Competence Resources  
[https://www.americanbar.org/groups/professional\\_responsibility/](https://www.americanbar.org/groups/professional_responsibility/)
- David Carr, Simple Competence: Surprisingly Complex, Ethics in Brief (San Diego Cnty. Bar Ass’n, June 18, 2018), <https://www.sdcba.org/?pg=Ethics-in-Brief-2018-06-18>

### **Technology Competence**

- State Bar of Cal. Standing Comm. on Prof'l Responsibility & Conduct, *Formal Opinion No. 2020-203* (2020),  
<https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/Formal-Opinion-No-2020-203-Data-Breaches.pdf>.
- ABA TechReport: Technology Competence  
[https://www.americanbar.org/groups/law\\_practice/resources/tech-report/](https://www.americanbar.org/groups/law_practice/resources/tech-report/)

### **Referral Competency Resources**

- ABA Formal Opinion 474: Referral Fees and Conflict of Interest  
[https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/ethics-opinions/aba-formal-opinion-474.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-474.pdf)
- California Bar Journal Article: “Ensuring Competence in Referrals”  
[https://www.calbarjournal.com/Portals/0/documents/reports/2007\\_Annual-Report\\_11-06.pdf](https://www.calbarjournal.com/Portals/0/documents/reports/2007_Annual-Report_11-06.pdf)
- Lawyer Referral Services Standards (State Bar of California)  
<https://www.calbar.ca.gov/Access-to-Justice/Initiatives/LRS-Provider-Certification>
- Avoiding Pitfalls When Making a Referral to Another Lawyer
- <https://www.ocbar.org/All-News/News-View/ArticleId/6319/August-2022-Ethically-Speaking-Avoiding-Pitfalls-When-Making-a-Referral-to-Another-Lawyer>

### **Subject Matter Competence**

- Immigration Consequences Resource Center  
<https://www.ilrc.org/crimes>

### **Cultural and Linguistic Competence**

- National Center for Cultural Competence  
<https://nccc.georgetown.edu/>
- ABA Standards for Language Access in Courts  
[https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/language\\_access/](https://www.americanbar.org/groups/legal_aid_indigent_defense/language_access/)
- California Courts Interpreter Search  
<https://languageaccess.courts.ca.gov/court-interpreters-resources/search-interpreter>

### **Supervisory Competence**

- ABA Law Practice Division: Managing Attorney Workbook  
[https://www.americanbar.org/groups/law\\_practice/](https://www.americanbar.org/groups/law_practice/)
- Professional Liability Insurance Providers' Risk Management Resources  
[https://www.americanbar.org/groups/lawyers\\_professional\\_liability/](https://www.americanbar.org/groups/lawyers_professional_liability/)