

# county bar update

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## Ethics: The California Pro Bono Stimulus Package

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On July 29, 2009, the California Supreme Court adopted new Rule of Professional Conduct 1-650, which limits some of the conflict of interest problems associated with volunteer participation in limited legal services programs.

Public comments urging quick adoption of the new rule—based on the American Bar Association's Model Rule of Professional Conduct 6.5 [Non-Profit and Court Annexed Limited Legal Services Programs]—stressed the dire need for volunteer legal services in California caused by the recent economic downturn.

While Rule 1-650 should certainly provide a boost to the bar's pro bono efforts, it will be important for practitioners to understand the new rule's limits.

**Overview of Rule 1-650.** Professional Rule of Conduct 3-310 prohibits members from taking on representations that are adverse to their clients or clients of their firm without first getting informed written consent. To comply with this rule, members typically conduct a conflict database search before accepting a new matter. While conflict searches are easy to do when you are fielding new client requests in your office, they are a bit more difficult in situations where you are counseling multiple clients on a number of different matters as is typical in volunteer legal clinics. The inherent conflict issues that could arise in this type of situation might cause a prudent member to avoid volunteering for legal clinics altogether.

New Rule 1-650 is intended to take away this potential disincentive associated with serving in legal clinics by limiting the circumstances under which a member is subject to Rule 3-310. Specifically, Rule 1-650 provides that members who participate in a qualified short-term limited legal services clinic are subject to Rule 3-310 only if the members *know* that the representation of a client involves a conflict. Additionally, Rule 1-650 provides that such members would only have an imputed conflict of interest if they *know* that someone in their firm would have a conflict with the matter at hand. The new rule also holds that a conflict of interest arising out of the clinic setting will not be imputed back to the member's law firm.

These provisions greatly simplify the conflict check required in a clinic setting. Members are merely required to avoid representations where they know that a conflict exists with their clients or the clients of their firm. In practice, the new rule should relieve much of the conflict pressure associated with work in legal service clinics and in turn should encourage more members to seek these enriching volunteer opportunities.

**Practice pointers.** While the new rule goes a long way toward providing members with peace of mind when operating in legal clinics, it does not completely alleviate the duty to avoid conflicts. While collective experience with the new rule will certainly develop a sound list of do's and don'ts, the following practice pointers immediately come to mind.

**1. Understand the types of representations that the rule covers.** The new rule applies to "short-term limited legal services to a client without expectation by either the member or the client that the member will provide continuing representation on the matter." This means that if you continue a representation after your initial clinic consultation, you fall outside the rule's protections. Therefore, you should be sure to do a normal conflict check before agreeing to continue any representation.

**2. Ask the right questions.** To ascertain whether you *know* of conflicts that arise from a clinic representation, you first need to find out who the potential adverse parties are with respect to your potential client's matter. It will be very important for you to do this *before* you begin receiving confidential information. The last thing you want to do is receive confidential information from a potential client about a dispute, only to find out that your potential client's dispute is with a client you are currently representing. If this does happen, you should immediately cease the potential representation and seek guidance from competent ethics counsel.

**3. Keep quiet back at the office.** The new rule provides that conflicts of interest arising from your participation in a legal clinic will not be imputed to members of your firm. While you could be precluded from acting adverse to your pro bono client, the rest of the members of your firm are not. It also means that you must be careful not to share your pro bono client's confidential information with your firm colleagues. If you do, you will create a potential conflict for them as well.

**4. Remember your pro bono representations.** As discussed above, while your clinic representations may not create future conflict problems for members of your firm, they may create future conflict problems for you. Due to this distinction, inclusion of your clinic client matters in the general conflict database of the firm may be inappropriate. In this event, you will need to keep your own personal conflict database of additional matters where you alone are conflicted.

**5. Know your audience.** While your natural instincts may point you to legal clinics geared toward your particular area of specialization, this may not always be a good idea. If you are giving advice in your area of specialization, you may incur a greater risk of creating conflict situations. For example, if your typical practice includes representing banks and you volunteer for a foreclosure clinic, you could wind up in the unfortunate position of having to turn down a new engagement in your area of expertise because of a pro bono conflict. This same concern would be virtually non-existent if instead you chose to volunteer at a clinic geared toward landlord-tenant or immigration issues.

Rule 1-650 should go a long way toward encouraging member to step up their pro bono efforts in these trying times. It alleviates one obvious downside to pro bono, the unintended creation of conflicts. Members seeking the protections of Rule 1-650, however, should be mindful of its limits.

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