

# ALERT - NEW CALIFORNIA RULES OF PROFESSIONAL CONDUCT FOR CORPORATE COUNSEL

The new California Rules of Professional Conduct take effect on November 1, 2018. The Rules of Professional Conduct establish standards of legal ethics and professional responsibility for attorneys in California. Of note, Rule 3-600 which provides for the duties of attorneys when representing organizations has been modified. The new version of the rule will be codified as Rule 1.13. Please find a brief explanation of the changes below.

The original Rule 3-600, provided that in situations where the attorney representing the organization becomes aware of any act or refusal to act by a constituent of the organization, in a manner the attorney knows to be (i) a violation of a legal obligation to the organization or a violation of law reasonably imputable to the organization, and (ii) likely to result in substantial injury to the organization, the attorney **may** take such actions as appear to be in the best lawful interest of the organization. Such actions include:

1. Urging reconsideration of the matter while explaining its likely consequence to the organization; or
2. Referring the matter to the next higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest internal authority that can act on behalf of the organization.

Rule 1.13, which becomes effective November 1, 2018, **requires** that in such a situation, unless the attorney reasonably believes that it is not necessary in the best lawful interest of the organization to do so, the attorney **shall** refer the matter to the highest authority that can act on the

behalf of the organization. For example, if the organization is a corporation, and the act or failure to act was perpetrated by the CEO, and the attorney believed the CEO would not alter his/her behavior through counsel, the attorney would be obligated to raise the matter with the Board of Directors. A similar situation would occur in regard to the actions of a manager of an LLC, where the attorney would be required to take the matter to the members of the LLC.

Going forward, it is always recommended to maintain a strong line of communication with the company's counsel. Additionally, it is not anticipated that this change will have a material effect on the practice, as in these situations, the attorney is hired by the organization, and as counsel of the organization, the attorney is bound to act in the best interest of the organization. That concept remains unchanged between Rule 3-600 and Rule 1.13. If anything, it should provide further assurance that the attorney is bound to serve in the best lawful interest of the organization, as a whole, and not in the best interest of any particular individual or group of individuals.

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