



A project of the Women Lawyers Association of
Los Angeles (WLALA) and Southwestern Law School's
Women Law Association

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I. Introduction

This is a public comment on the issue of whether California should adopt a new Rule of Professional Conduct addressing a lawyer's duty to report the misconduct of another lawyer. Our group, the Overarching Reproductive Law Project, holds that any such new duty to report should expressly EXCLUDE any act regarding an attorney's role in obtaining or aiding one to obtain an abortion in violation of another state's laws restricting abortion.

II. Does "misconduct" include violating anti-choice laws of other states?

California Professional Rule 1.2.1(a) states that:

A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows is criminal, fraudulent, or a violation of any law, rule, or ruling of a tribunal.

California Professional Rule 8.4(b) states that:

It is professional misconduct for a lawyer to: (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

California Professional Rule 8.2 Comment [4] states that:

A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.

In the aftermath of the U.S. Supreme Court's June 24, 2022 opinion, *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___, 142 S. Ct. 2228 (2022), and *Whole Women's Health v. Jackson*, 594 U.S. ___, 141 S. Ct. 2228 (2021) (S.B. 8 litigation), in which the U.S. Supreme Court allowed a Texas law to stand effectively banning abortion by permitting private causes of action against people assisting residents of Texas with seeking abortion care, we asked that the State Bar issue the following advisory opinion AND exclude abortion-access issues in any new rule regarding the duty to report via a letter sent Oct 3:

As a result of and in response to the U.S. Supreme Court cases Dobbs v. Jackson Women's Health Organization and Whole Women's Health v. Jackson (S.B. 8 litigation), a California lawyer who engages in conduct that is legal in California, specifically that of seeking an abortion, or facilitating or aiding and abetting a person seeking abortion care or other reproductive health care access to secure that care, in a state where that care is legal, whether or not that facilitation or care is legal or authorized in another state, the California attorney will not face discipline (original or reciprocal) from the California Bar. Aiding a person who seeks abortion care is not considered an act of moral turpitude, nor does it affect the lawyer's fitness to practice law.

The above opinion contemplates these five scenarios:

1. An attorney who is a member of the California Bar is domiciled in a restrictive state, such as Texas, working in an in-house counsel position at a national company, and helps a woman travel to another state to seek abortion care. Absent this opinion, the attorney would be subject to discipline by the California bar for breaking a Texas law (due to choice of law).
2. An attorney who is a member of the California Bar helps a non-client domiciled in a restrictive state such as Texas seek an abortion in California (or another more protective state) in violation of state law.
3. An attorney who is a member of the California Bar engages in digital communications with a client or non-client in a restrictive state, such as Texas, in furtherance of seeking abortion care.
4. An attorney who is a member of the California Bar is disciplined by the Bar of another state due to violating anti-aiding and abetting statutes in a restrictive state.
5. An attorney who is a member of the California Bar represents a corporation or entity with

employees in a restrictive state such as Texas and provides legal advice regarding his/her/their client's intention to provide health care benefits to those employees that include abortion care and/or funds to facilitate travel to procure abortion care.

III. Summary

Any new Rule of Professional Conduct adopted by the California Bar should explicitly exclude from the definition of misconduct any attorney behavior relating to abortion care access because California attorneys who conscientiously violate "aiding and abetting" laws in other states by helping people access abortion care in California (or other non-restrictive states) are 1. Not committing acts of "moral turpitude" and 2. Should not be subject to bar discipline. In the alternative, the State Bar should issue the above advisory opinion protecting California attorneys.

Overarching Reproductive Law Project

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