

**RULE 8.1:  
TRUTHFULNESS IN BAR ADMISSION MATTERS**

**Executive Summary**

Proposed Rule 8.1 deals with truthfulness in bar admission matters. Paragraph (a) prohibits a lawyer from knowingly making a false statement in connection with a bar admission matter. Paragraph (b) provides for discipline when a lawyer fails to disclose a material fact requested in connection with a bar admission matter. The disclosures required by the Proposed Rule are qualified by paragraph (c): the Proposed Rule does not require disclosure of information protected by the duty of confidentiality (Rule 1.6).

**Text of Proposed Rule with COSAC Explanation**

<b>RULE 8.1: TRUTHFULNESS IN BAR ADMISSION MATTERS</b>	<b>COSAC COMMENTARY</b>
<p>An applicant for admission to the bar or a lawyer in connection with a bar admission application shall not knowingly:</p> <p style="padding-left: 40px;">(a) make a false statement of material fact; or</p> <p style="padding-left: 40px;">(b) fail to disclose a material fact requested in connection with a lawful demand for information from an admissions authority.</p> <p style="padding-left: 40px;">(c) This rule does not require disclosure of information protected by Rule 1.6.</p>	<p>The Proposed Rule, unlike ABA Rule 8.1, applies only to a lawyer's role in bar admission matters. Disciplinary matters are treated in Proposed Rule 8.3. The Rule's title has been changed to reflect its content.</p> <p>Except for its reduced scope, ¶ (a) is identical to ABA Rule 8.1(a) and virtually identical to the first clause of DR 1-101(A).</p> <p>¶ (b) is based on the second clause of DR 1-103(B); it overlaps in substance with ABA Rule 8.1(b) but follows the New York language in dealing with omission of material facts.</p> <p>The exception of ¶ (c) follows the language of the except clause of ABA Rule 8.3(b) rather than DR 1-103(B)'s reference to information "not protected as a confidence or secret."</p>

COMMENT	COSAC COMMENTARY
<p>[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission as well as that of others.</p> <p>[2] [Omitted.]</p> <p>[3] A lawyer representing an applicant for admission to the bar is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.</p>	<p>The first three sentences of Comment [1] are identical to ABA Comment [1]. The remainder of the Comment has been altered or omitted to reflect the changed content of Proposed Rule 8.1.</p> <p>Comment [2] of ABA Rule 8.1, dealing with the privilege of self-incrimination, is omitted. The privilege is discussed in Comment [3A] of Proposed Rule 8.3, which deals with a lawyer's response to requests in disciplinary matters.</p> <p>Comment [3] is identical to ABA Comment [3], except that language applicable to disciplinary matters is omitted. The Comment makes it clear that a lawyer acting in a representative capacity for a person seeking admission to the bar is subject to the rules applicable to that function rather than Rule 8.1.</p>

### Changes from Existing New York Code

Proposed Rule 8.1 follows the structure of New York's Disciplinary Rules and deals with honesty in statements in connection with admission matters in Rule 8.1. The same topic in disciplinary matters is treated in Proposed Rule 8.3, which also deals with required reporting of misconduct by lawyers and judges. Proposed Rule 8.1 largely adopts the substantive standards stated in DR 1-101(A) with reference to applicant and lawyer statements in connection with bar admission.

Proposed Rule 8.1, following ABA Model Rule 8.1, imposes the same standards of truthfulness to applicants for admission to statements by lawyers made in connection with another person's application. In contrast, DR 1-101 applies standards of honesty and misrepresentation only to statements made by the applicant for admission, and applies a much different standard (whether

the lawyer knows the applicant to be “unqualified in respect to character, education, or other relevant attribute”) to statements supporting another person’s application for admission. However, the general prohibition of dishonesty in DR 1-102(A)(4) would apply to such statements. Thus, the common standard stated in Proposed Rule 8.1 reflects the substance of both rules.

Proposed Rule 8.1 follows ABA Model Rule 8.1 in stating that the applicant or other lawyer “shall not . . . knowingly make a false statement of material fact,” whereas DR 1-101(A) imposes discipline if the applicant “has deliberately made a materially false statement” in the application.

Proposed Rule 8.1(b) follows DR 101(A) in prohibiting a knowing failure to disclose a material fact; whereas, ABA Rule 8.1 provides that the applicant or another lawyer “shall not . . . fail to disclose a fact necessary to correct a misapprehension known by the person to arise in the matter.” The Proposed Rule thus avoids the difficulties of apprehending whether a misapprehension has occurred

Proposed Rule 8.1 follows ABA Model Rule 8.1 in referring to “applicants for admission to the bar.”

### **Reporter’s Notes**

Proposed Rule 8.1 follows the New York Code in applying to a lawyer’s statements to a only to an admissions authority. The ABA Model Rule 8.1 applies to statements both to an admissions and a disciplinary authority.

Proposed Rule 8.1 follows the ABA Model Rule in applying the same standards of truthfulness (falsity and misrepresentation) to statements a lawyer makes to a disciplinary or admissions authority.

Proposed Rule 8.1 applies a knowledge standard to: (a) the making of a false statement to an admissions authority, and (b) the failure to disclose a material fact to an admission authority.

Model Rule 8.1(b) punishes a failure “to disclose a fact necessary to correct a misapprehension known by the [applicant or lawyer] to have arisen in the matter,” while Proposed Rule 8.1(b), following DR 1-101(A), prohibits a failure “to disclose a material fact requested in connection with a lawful demand for information from a disciplinary or admissions authority”

### **Corresponding New York Disciplinary Rules**

#### **DR 1-101: Maintaining Integrity and Competence of the Legal Profession**

(A) A lawyer is subject to discipline if the lawyer has made a materially false statement in, or has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person that the lawyer knows to be unqualified in respect to character, education, or other relevant attribute.

**DR 1-103(B): Disclosure of Information to Authorities**

(B) A lawyer possessing knowledge or evidence, not protected as a confidence or secret, concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

**DR 1-102(A)(4) and (5): Misconduct**

(A) A lawyer or law firm shall not:

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.