

West's Annotated California Codes  
Rules of the State Bar of California (Refs & Annos)  
California Rules of Professional Conduct (Refs & Annos)  
Chapter 3. Advocate

Prof. Conduct, Rule 3.8  
Formerly cited as CA ST RPC Rule 5-110

Rule 3.8. Special Responsibilities of a Prosecutor

Currentness

The prosecutor in a criminal case shall:

- (a) not institute or continue to prosecute a charge that the prosecutor knows<sup>1</sup> is not supported by probable cause;
- (b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;
- (d) make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\* and
- (e) exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.

**(f)** When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

**(g)** When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

### **Credits**

(Adopted, eff. Nov. 1, 2018.)

### **Footnotes**

<sup>1</sup> An asterisk (\*) identifies a word or phrase defined in the terminology rule, rule 1.0.1.

### **Prof. Conduct, Rule 3.8, CA ST RPC Rule 3.8**

California Rules of Court, California Rules of Professional Conduct, and California Code of Judicial Ethics are current with amendments received through June 1, 2019. California Supreme Court, California Courts of Appeal, Guidelines for the Commission of Judicial Appointments, Commission on Judicial Performance, and all other Rules of the State Bar of California are current with amendments received through June 1, 2019.