

Rule 1.8.3 Gifts from Client. [Sorted by Commenter]						TOTAL = <u>3</u> Agree = <u>2</u> Disagree = <u> </u> Modify = <u>1</u> NI = <u> </u>
No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	San Diego County Bar Association (Ross Simmons)	M			<p>Rule should track ABA Model Rule 1.8(c) but replace the term “solicit” with “induce.”</p> <p>Greater instruction needed as to the terms “substantial” and “modest” as used in the rule and Comments [1] and [2].</p> <p>Rule should not include the phrase “attempt to induce” because it adds an unnecessarily broad sweep to the rule and is too subjective, making compliance and enforcement little more than conjecture.</p> <p>Statement in Comment [1] that lawyers may accept modest gifts should include the qualifier that is found in the Model Rule that the transaction must meet general standards of fairness. Add a Comment [4] which would state: “The term ‘close, familial relationship’ apart from those expressly set out in the Rule, is intended to similarly situated relationships, which by way of example include registered domestic partners or equivalents in other jurisdictions, cohabitants, relatives within the third degree of the lawyer and of the lawyer’s spouse (or domestic partner or equivalent, as applicable).”</p>	<p>This language was revised and the term “induce” is used.</p> <p>The language was revised and the term “modest” is no longer used.</p> <p>Commission agreed, and removed “attempts to induce” from the Rule.</p> <p>Commission removed the discussion regarding “modest” gifts. Commission did not make the requested revision, in part, because the Probate Code references are adequate and controlling.</p>

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

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**TOTAL = _3_ Agree = _2_
Disagree = ___
Modify = _1_
NI = ___**

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					Add a Comment [5] which would state: "In interpreting the Rule, similarly worded authority from other jurisdictions is intended to be instructive although not binding. The term 'induce,' however, is intended to be broader than the term 'solicit.'"	Commission did not make the requested revision, in part, because it has removed "attempt to induce" from the Rule.
2	Office of Chief Trial Counsel	A	Yes	Comment [1]	The first sentence of Comment [1] seems unnecessary in light of the clear language of the Proposed Rule.	
3	COPRAC	A	Yes		Support as drafted.	No response required.

Rule 1.8.3 Gifts From Client
(Commission’s Proposed Rule – Clean Version)

- (a) A lawyer shall not:
 - (1) induce or solicit a client to make a substantial gift, including a testamentary gift, to the lawyer or a person related to the lawyer, or
 - (2) prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer or other recipient of the gift is related to the client.
 - (b) For purposes of this Rule, related persons include "a person who is related by blood or marriage" as that term is defined in Cal. Probate Code, section 21350(b).
- [3] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client’s estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provisions in Rule 1.7(d). In disclosing the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer’s financial interest in the appointment, as well as the availability of alternative candidates for the position.

COMMENT

- [1] Paragraph (a) prohibits a lawyer from persuading or influencing a client to give the lawyer any gift of more than nominal market value, except where the lawyer is related to the client. However, a lawyer does not violate this Rule merely by engaging in conduct that might result in a client making a gift, such as by sending the client a wedding announcement. Discipline is appropriate where impermissible influence occurs. (See *Magee v. State Bar* (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839].)
- [2] If effecting a substantial gift requires preparing a legal instrument such as a will or conveyance, the client must have independent representation by another lawyer in accordance with Probate Code, sections 21350 et seq. The sole exception is where the client is a relative of the donee.