

**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.