

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review.
 [Sorted by Commenter]**

TOTAL = 2 Agree = 1
 Disagree = 1
 Modify =
 NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	San Diego County Bar Association	A	Yes		Rule 4-300 conflicted with Probate Code 9880-9885 which provided that a lawyer could participate in a probate proceeding sale. This revision aligns both statutes.	No response required.
2	Office of Chief Trial Counsel	D	Yes		<p>OCTC opposes the change to this rule. Current Rule 4-300 prohibits all such transactions, but subparagraph (c) of the Proposed Rule permits lawyers to directly or indirectly purchase property as specifically authorized by Probate Code sections 9880 through 9885. However, it is not clear that Probate Code section 9881 was intended to permit the personal representative's attorney to purchase property of the estate personally.</p> <p>OCTC has serious concerns about permitting a member to either directly or indirectly purchase estate property pursuant to Probate Code sections 9880-9885. They include: (1) whether the transaction is truly fair and in the best interest of the client; (2) its impact on the public's confidence in the profession; (3) whether such transactions undermine or may undermine the attorney's duty of undivided loyalty to the client; (4) whether the attorney is looking for a deal rather than representing his</p>	The Commission had considered at length the disparity between current Rule 4-300 and the Probate Code section, and decided that although the great majority of the Commission felt that the rule was better than the statute, the Commission should not create or continue an inconsistency with the statutory regime.

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

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				Comment [1]	<p>or her client's best interest; and (5) the appearance of or actual overreaching by the attorney against potentially unsophisticated and/or grieving parties or family members.</p> <p>If the Commission strikes subparagraph (c) then Comment [1] should be stricken.</p>	

Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review
(Commission's Proposed Rule – Clean Version)

- (a) A lawyer shall not directly or indirectly purchase property at a foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyer or any lawyer affiliated with that lawyer's law firm is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian or conservator.
- (b) A lawyer shall not represent the seller at a foreclosure, receiver's, trustee's, or judicial sale in which the purchaser is a spouse, relative or other close associate of the lawyer or of another lawyer in the lawyer's law firm.
- (c) This Rule does not prohibit a lawyer's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885; but such transactions remain subject to the provisions of Rules 1.8.1 and 1.7.

COMMENT

- [1] A lawyer may lawfully participate in a transaction involving a probate proceeding which concerns a client by following the process described in Probate Code sections 9880 - 9885. These provisions, which permit what would otherwise be impermissible self-dealing by specific submissions to and approval by the courts, must be strictly followed in order to avoid violation of this Rule.