

Rule 5.6 Restrictions on a Lawyer's Right to Practice. [Sorted by Commenter]						TOTAL = Agree = Disagree = 0 Modify = NI = 0
No.	Commenter	Position <sup>1</sup>	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	San Diego County Bar Association	M	Yes		<p>Approve of new rule, except that the apparent complete deletion of RPC 1 500 (B) should be reconsidered</p> <p>One committee member dissented on the basis that ethical rules should not govern internal law firm agreements relating to compensation. 5.6(b) in its current form can be used to prevent lawyers from serving clients in a specialized field once they leave a firm. "My fear is that the law firms may use the state bar mechanism to achieve their private ends rather than protecting the public from unscrupulous lawyers."</p>	<p>Commission agreed; however the standard in paragraph (B) of RPC 1 500 is included in proposed Rule 8.3 and not in rule 5.6.</p> <p>The Commission made no change. See response to Los Angeles County Bar Association.</p>
2	Office of Chief Trial Counsel	A	Yes		OCTC supports this rule, but believes Comment [1] more appropriately belongs in a treatise, law review article, or ethics opinion.	The Commission has attempted to balance the desire for conciseness with the need to provide guidance in the interpretation and application of the black letter rule and has determined that the reference to the California Supreme Court's decision in <i>Howard v. Babcock</i> provides a rationale for the exception to the rule that is not stated in the Comment to ABA Model Rule 5.6.
3	COPRAC	A	Yes		Support as drafted.	No response required.

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



**Rule 5.6 Restrictions on a Lawyer's Right to Practice**  
**(Commission's Proposed Rule – Clean Version)**

A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy

**COMMENT**

- [1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for an agreement among partners imposing a reasonable cost on departing partners who compete with the law firm in a limited geographical area as such an agreement strikes a balance between the interests of clients in having the attorney of choice, and the interest of law firms in a stable business environment. See *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80].
- [2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.
- [3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.