

From: [Kevin Mohr](#)
To: [Lee, Mimi](#)
Cc: [Difuntorum, Randall](#); [McCurdy, Lauren](#)
Subject: Re: RRC - Rule 1.8.11 (the Rule formerly known as Rule 1.8.13) - III.D.
Date: Wednesday, January 06, 2010 5:51:59 PM
Attachments: [RRC - 3-310 \[1-8-13\] - Rule - DFT2.2 \(01-06-10\)ML-KEM - CLEAN-LAND.doc](#)
[RRC - 3-310 \[1-8-13\] - Public Comment Chart - By Commenter - DFT2.1 \(01-05-10\)RLK.doc](#)
[RRC - 3-310 \[1-8-13\] - Compare - Comment Explanation - DFT2.2 \(01-06-10\)ML-KEM.doc](#)
[RRC - 3-310 \[1-8-13\] - Compare - Rule Explanation - DFT2.2 \(01-06-09\)ML-KEM.doc](#)
[RRC - 3-310 \[1-8-13\] - Compare - Introduction - DFT4.2 \(01-06-10\)ML-KEM.doc](#)
[RRC - 3-310 \[1-8-13\] - Dashboard - ADOPT - DFT2.1 \(01-06-10\)ML-KEM.doc](#)

Hey Mimi:

I went through and for the most part the documents were fine. However, the title was listed incorrectly (it should refer to Rules 1.8.1 through 1.8.9, not 1.8.8), so I changed the documents. I also added a footer to the Dashboard, deleted the text box under "Not Controversial" (we no longer give explanations for non-controversial rules), removed Bob's markings in the Introduction and correct the subtitle, and corrected the reference to Rule 1.9 in both the Rule and the Comment. Rule 1.9 [formerly Rule 1.8.12] is not personal, and so a prohibition under that rule is imputed to all the lawyers in the firm. The only rule that is personal now is Rule 1.8.10. So, I've attached the following (my changes are highlighted in yellow):

1. Dashboard, Draft 2.1 (1/6/10)ML-KEM;
2. Introduction, Draft 4.2 (1/6/10)ML-KEM;
3. Rule Comparison Chart, Draft 2.2 (1/6/10)ML-KEM;
4. Comment Comparison Chart, Draft 2.2 (1/6/10)ML-KEM;
5. Rule, Draft 2.2 (1/6/10)ML-KEM.
6. Public Comment Chart, Draft 2.1 (1/5/10)RLK. I changed "Commentator" to "Commenter" in the second column.

Please let me know if you have any questions. Thanks,

Kevin

P.S. I left the file names as 1-8-13 so as not to confuse them with the files I have for the now discarded rule 1.8.11. Eventually, I'll change them on

my end; no reason not to do so on your end.

P.P.S. I'm now all caught up on Lost. I don't believe that Juliet has bought it. They will bring her back somehow. I just hope they don't bring back Charlie. He's way too annoying.

Lee, Mimi wrote:

Kevin:

Attached you will find all the documents for Rule 1.8.11 (formerly known as 1.8.13). Randy asked me to clean up Bob's clean draft and modify the comparison tables to track the changes that were made in the clean version. I have also updated the version numbers in the footers to make them consistent and modified the dashboard as Bob requested. One thing that I did not touch, is the Introduction. Bob has a lot of strikeout in the Introduction which Randy asked me to leave so that you can review the changes he wants to make. After you have done so, either you or I can clean it up as the final version. Let me know if you have any questions.

Mimi

From: Difuntorum, Randall
Sent: Wednesday, January 06, 2010 9:44 AM
To: McCurdy, Lauren
Subject: FW: RRC_Rule 1.8.13

Lauren: Please work with Mimi to use Bob Kehr's new clean draft to generate a new Model Rule redline. The new redline should be placed into the middle column of Bob Kehr's new rule explanation and new comment explanation. I believe Bob has already updated the explanation columns. Also, please substitute an un-checked box for the current checked box on the Dashboard next to "Existing California Law" as Bob Kehr has indicated that he does not know how to do this. Thanks. -Randy D.

From: Robert L. Kehr [<mailto:rlkehr@ksclp.com>]
Sent: Tuesday, January 05, 2010 6:35 PM
To: Kevin Mohr
Cc: Difuntorum, Randall; Kevin Mohr G; Harry Sondheim; Mark Tuft; Kurt Melchior (E-mail); snyderlaw@charter.net; McCurdy, Lauren; Lee, Mimi
Subject: RE: RRC_Rule 1.8.13

Try this.

rlk

From: Robert L. Kehr

Sent: Tuesday, January 05, 2010 6:32 PM
To: 'Kevin Mohr'
Cc: 'Difuntorum, Randall'; 'Kevin Mohr G'; 'Harry Sondheim'; 'Mark Tuft'; 'Kurt Melchior (E-mail)'; snyderlaw@charter.net; 'Lauren McCurdy'; 'Lee, Mimi'
Subject: RE: RRC_Rule 1.8.13

I've clarified what concerned me, and I think this package now is ready for review.

rlk

From: Robert L. Kehr
Sent: Tuesday, January 05, 2010 6:25 PM
To: 'Kevin Mohr'
Cc: Difuntorum, Randall; Kevin Mohr G; Harry Sondheim; Mark Tuft; Kurt Melchior (E-mail); snyderlaw@charter.net; Lauren McCurdy; Lee, Mimi
Subject: RE: RRC_Rule 1.8.13

Kevin: I've now had the chance to look at this. Making these changes will cause no end of confusion in our personal record keeping, but your recommendation seems to me to make at least as much sense as any of the alternatives that I've been able to identify. I will go ahead and make these changes in Rule 1.8.11 (formerly 1.8.13). I then suggest that the Rule 1.8.11 agenda materials be circulated with your 1/2/10 message.

California doesn't now have an imputation provision that parallels what now will be 1.8.11. I've edited the Dashboard accordingly but have not removed the checked box (b/c I don't know how).

I've attached drafts of the Introduction, Dashboard, clean Rule, Rule and Comment explanations (without the changes needed to the middle columns), and commenter chart.

rlk

From: Kevin Mohr [<mailto:kemohr@charter.net>]
Sent: Saturday, January 02, 2010 7:56 PM
To: Robert L. Kehr
Cc: Difuntorum, Randall; Kevin Mohr G; Harry Sondheim; Mark Tuft; Kurt Melchior (E-mail); snyderlaw@charter.net; Lauren McCurdy; Lee, Mimi
Subject: Re: RRC_Rule 1.8.13

Bob:

Sorry I'm just getting back on this but I've been out of town. I wondered the same thing after we moved the substance of 1.811 into 1.7(d). Here are my thoughts:

1. We should keep our parallel numbering system to the extent possible, i.e., leave a space (i.e., "[RESERVED]") for what would have been 1.8.4 (publicity rights) -- which we rejected at our last meeting --

and match up 1.8.5 to 1.8(e), 1.8.6 to 1.8(f), etc.

2. At the last meeting, however, we also rejected a counterpart to 1.8(i) ["1.8.9"] (acquiring a proprietary interest in litigation). Rather than leave a blank there, I recommend moving what is now 1.8.12, which has no counterpart in the Model Rule but carries forward 4-300 (purchasing property at a foreclosure sale) into the 1.8.9 slot.
3. We can then renumber 1.8.13 as 1.8.11, which matches up w/ 1.8.11. I don't think we should leave 1.8.11 as "reserved" because that could cause confusion for someone who is expecting to find the Rule 1.8 imputation provision there.
4. However, I think you can do the drafting w/o making any decision on the numbering yet. Just keep the numbers as are, bracket and/or highlight the internal cross-references to other rules w/in the eight series, and staff can implement any decision that Commission makes at the next meeting.

Kevin

Robert L. Kehr wrote:

Randy and Kevin: I have begun to look at the materials on this and have a threshold question. The Commission moved Rule 1.8.11_3-320 into Rule 1.7(d). Has there been any decision on what to do with the Rule 1.8 numbering? Are we going to leave a gap where 1.8.11 used to be, or are we going to collapse the numbering. If the latter is the decision, 1.8.13 and 1.8.12 would be renumbered. I can't locate any decision or even discussion on this. This needs to be decided to complete the 1.8.13 drafting.

Robert L. Kehr
Kehr, Schiff & Crane, LLP
12400 Wilshire Blvd. 13th Fl.
Los Angeles, CA 90025
310/820-3455 (tele)
310/820-4414 (fax)
rlkehr@kscllp.com

--
Kevin E. Mohr
Professor
Western State University College of Law
1111 N. State College Blvd.
Fullerton, CA 92831
714-459-1147
714-738-1000 x1147
714-525-2786 (FAX)

Proposed Rule 1.8.13 [n/a] “Imputation of Prohibition Under Rules 1.8.1 through 1.8.9”

(Draft #2.2, 01/06/10)

Summary: This new rule addresses the imputation of a lawyer’s conduct prohibited by rules in the 1.8 series of specific prohibitions (such as the prohibition against a lawyer entering into a business transaction with a client) to other lawyers associated with the prohibited lawyer.

Comparison with ABA Counterpart

Rule	Comment
<input checked="" type="checkbox"/> ABA Model Rule substantially adopted	<input checked="" type="checkbox"/> ABA Model Rule substantially adopted
<input type="checkbox"/> ABA Model Rule substantially rejected	<input type="checkbox"/> ABA Model Rule substantially rejected
<input type="checkbox"/> Some material additions to ABA Model Rule	<input type="checkbox"/> Some material additions to ABA Model Rule
<input type="checkbox"/> Some material deletions from ABA Model Rule	<input type="checkbox"/> Some material deletions from ABA Model Rule
<input type="checkbox"/> No ABA Model Rule counterpart	<input type="checkbox"/> No ABA Model Rule counterpart

Primary Factors Considered

- Existing California Law

Rule

Statute

Case law

- State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

- Other Primary Factor(s)

Rule Revision Commission Action/Vote to Recommend Rule Adoption

(13 Members Total – votes recorded may be less than 13 due to member absences)

Approved on 10-day Ballot, Less than Six Members Opposing Adoption

Vote (see tally below)

Favor Rule as Recommended for Adoption _____

Opposed Rule as Recommended for Adoption _____

Abstain _____

Approved on Consent Calendar

Approved by Consensus

Commission Minority Position, Known Stakeholders and Level of Controversy

Minority Position Included on Model Rule Comparison Chart: Yes No

No Known Stakeholders

The Following Stakeholders Are Known:

Very Controversial – Explanation:

Moderately Controversial – Explanation:

Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 1.8.11* Imputation of Prohibitions Under Rules 1.8.1 through 1.8.9

January 2010

(Draft rule to be considered for adoption.)

INTRODUCTION:

Proposed Rule 1.8.11, which governs the imputation of conduct prohibited in the 1.8 series of Rules to lawyers associated in law firms, is based on Model Rule 1.8(k). Changes to the language in Model Rule 1.8(k) are primarily intended to conform the Rule to the Commission's numbering convention for the proposed rule counterparts to Model Rule 1.8. Rather than follow the ABA in placing a group of largely unrelated conflict concepts in a single rule, for ease of reference the Commission has assigned each concept in Model Rule 1.8 its own separate rule number.

Please note that this Rule went out for public comment as Rule 1.8.13, and as a result there are references to the earlier numbering in the public comment.

* Proposed Rule, Draft 2.2 (1/6/10). [Formerly proposed Rule 1.8.13]

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 1.8(k) Conflict Of Interest: Current Clients: Specific Rules</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 through 1.8.9</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.</p>	<p>(k) While lawyers are associated in a <u>law</u> firm, a prohibition in the foregoing paragraphs (a)<u>Rules 1.8.1</u> through (i)<u>Rule 1.8.9</u> that applies to any one of them shall apply to all of them.</p>	<p>Rule 1.8.11 is based on Model Rule 1.8(k). The changes made to the Model Rule conform the proposed Rule to the Commission's numbering convention in the 1.8 series of Rules. See Introduction.</p>

* Proposed Rule, Draft **2.2 (1/6/09)**, Redline/strikeout showing changes to the ABA Model Rule

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 1.8(k) Conflict Of Interest: Current Clients: Specific Rules Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 through 1.8.9 Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.</p>	<p>[201] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) <u>Rules 1.8.1 through (j) 1.8.9</u> also applies to all lawyers associated in a <u>law</u> firm with the personally prohibited lawyer. For example, one lawyer in a <u>law</u> firm may not enter into a business transaction with a client of another member of <u>lawyer associated in</u> the <u>law</u> firm without complying with paragraph (a) <u>Rule 1.8.1</u>, even if the first lawyer is not personally involved in the representation of the client. The <u>This Rule does not apply to Rule 1.8.10 since the prohibition set forth in paragraph (j) that Rule</u> is personal and is not applied to associated lawyers.</p>	<p>Comment [1] to proposed Rule 1.8.11 is based on Model Rule 1.8, Comment [20]. As with the Rule itself, the changes made to the Model Rule conform the proposed Rule to the Commission's numbering convention in the 1.8 series of Rules. See Introduction.</p>

* Proposed Rule, **Draft 2.2 (1/6/09)**. Redline/strikeout showing changes to the ABA Model Rule

Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 through 1.8.9

(Commission's Proposed Rule – Clean Version)

While lawyers are associated in a law firm, a prohibition in Rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

Comment

- [1] A prohibition on conduct by an individual lawyer in Rules 1.8.1 through 1.8.9 also applies to all lawyers associated in a law firm with the personally prohibited lawyer. For example, one lawyer in a law firm may not enter into a business transaction with a client of another lawyer associated in the law firm without complying with Rule 1.8.1, even if the first lawyer is not personally involved in the representation of the client. This Rule does not apply to Rule 1.8.10 since the prohibition in that Rule is personal and is not applied to associated lawyers.

**Rule 1.8.11_3 Imputation of Personal Conflicts.
[Sorted by Commenter]**

TOTAL = __ Agree = __
Disagree = __
Modify = __
NI = __

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	Orange County Bar Association	A			The OCBA endorses the adoption of proposed Rule 1.8.13, which is similar to ABA Model Rule 1.8(k).	No response needed.
2	San Diego County Bar Association Legal Ethics Committee	A			We approve of the new rule in its entirety.	No response needed.
3	Santa Clara County Bar Association	A			No comment.	No response needed.

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

Rule 1.8.13 – Public Comment – File List

E-2009-292d OCBA [1.8.13]

E-2009-351d SDCBA [1.8.13]

E-2009-358d Santa Clara County Bar [1.8.13]

Hollins, Audrey

From: Trudy Levindofske [trudy@ocba.net]
Sent: Friday, November 06, 2009 2:53 PM
To: Hollins, Audrey
Cc: 'Garner, Scott'; 'Shawn M Harpen'
Subject: Orange County Bar Comments Re Proposed Rules of Professional Conduct
Attachments: OCBA Comments to Commission Nov 2009.pdf

Dear Ms. Hollins:

Attached are comments being sent on behalf of the Orange County Bar Association regarding ten (10) of the eleven (11) proposed new or amended Rules of Professional Conduct of the State Bar of California as developed by the State Bar's Special Commission for the Revision of the Rules of Professional Conduct. We appreciate the work of the Commission and the opportunity to provide these comments, which are attached in PDF format.

- Proposed Rule 1.2 - Scope of Representation and Allocation of Authority between Client and Lawyer
- Proposed Rule 1.6 – Confidentiality of Information
- Proposed Rule 1.8.2 – Use of Current Client's Information Relating to the Representation
- Proposed Rule 1.8.13 – Imputation of Prohibitions Under Rules 1.8.1 through 1.8.9, and 1.8.12
- Proposed Rule 1.9 – Duties to Former Clients
- Proposed Rule 1.10 – Imputation of Conflicts – General Rule
- Proposed Rule 1.14 – Client with Diminished Capacity
- Proposed Rule 2.1 – Advisor
- Proposed Rule 3.8 – Special Responsibilities of a Prosecutor
- Proposed Rule 8.5 – Disciplinary Authority; Choice of Law

Please let me know if you require any additional information or if you prefer that these comments are provided in a different format.

*Trudy C. Levindofske, CAE
Executive Director
Orange County Bar Association
Orange County Bar Association Charitable Fund
(949)440-6700, ext. 213*

MEMORANDUM

Date: October 28, 2009

To: Commission for the Revision of the Rules of Professional Conduct of the State Bar of California

From: Orange County Bar Association ("OCBA")

Re: **Proposed Rule 1.8.13 – Imputation of Prohibitions Under Rules 1.8.1 through 1.8.9, and 1.8.12**

Founded over 100 years ago, the Orange County Bar Association has over 7,000 members, making it one of the largest voluntary bar associations in California. The OCBA Board of Directors, made up of practitioners from large and small firms, with varied civil and criminal practices, and of differing ethnic backgrounds and political leanings, has approved this comment prepared by the Professionalism & Ethics Committee.

The OCBA respectfully submits the following comments concerning the subject proposed Rule:

The OCBA endorses the adoption of proposed Rule 1.8.13, which is similar to ABA Model Rule 1.8(k).

This proposed Rule would be the same as the Model Rule with respect to imputation of conflicts of interest to other attorneys in the same law firm, adopting the same substantive exception to the imputation rules as the Model Rules adopt: certain conflicts of a personal nature (*i.e.*, if a lawyer representing another person in the matter is a family member or has a close personal relationship with the other lawyer) would not be imputed to other attorneys in the law firm. The OCBA agrees with this approach; conflicts based on personal relationships between adverse attorneys should not be imputed to associated lawyers who lack the same personal connection with the adversary.



**SAN DIEGO COUNTY
BAR ASSOCIATION**

November 11, 2009

Audrey Hollins
Office of Professional Competence,
Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Re: Comments to Proposed Amendments to the Rules of Professional Conduct of
The State Bar of California (Batch 5)

Dear Ms. Hollins:

On behalf of the San Diego County Bar Association (SDCBA), I respectfully submit
the attached comments to Batch 5 of the Proposed Amendments to the Rules of
Professional Conduct. The comments were proposed by the SDCBA's Legal Ethics
Committee, and have been approved by our Board of Directors.

Sincerely,

Jerrilyn T. Malana, President
San Diego County Bar Association

Enclosures

cc: David F. McGowan, Co-Chair, SDCBA Legal Ethics Committee
Edward J. McIntyre, Co-Chair, SDCBA Legal Ethics Committee

2009 Board of Directors

President
Jerrilyn T. Malana

President-Elect
Patrick L. Hosey

Vice-Presidents
Stacy L. Fode
J. Daniel Holsenback
Daniel F. Link
Liza D. Suwczynsky
Howard M. Wayne

Secretary
Elizabeth S. Balfour

Treasurer
Timothy J. Richardson

Directors
Thomas M. Buchenau
Tina M. Fryar
John H. Gomez
Duane S. Horning
James E. Lund
Marcella O. McLaughlin
Marvin E. Mizell
Gita M. Varughese

Young/New Lawyer Director
Alex M. Calero

Immediate Past President
Heather L. Rosing

Executive Director
Ellen Miller Sharp

**ABA House of Delegates
Representatives**
Janice P. Brown
Monty A. McIntyre

**State Bar Board of Governors
District Nine Representative**
Bonnie M. Dumanis

**Conference of Delegates of
California Bar Associations
District Nine Representative**
James W. Talley

SDCBA Legal Ethics Committee
Subcommittee for Responses to Requests for Public Comment
Coversheet to Recommendations on State Bar of California Rules Revision Commission
Batch 5

- Rule 1.2 Scope of Representation [N/A]
APPROVE
- Rule 1.6 Confidentiality of Information [3-100, B&P 6068(e)]
APPROVE WITH MODIFICATIONS – see comments
- Rule 1.8.2 Use of Confidential Information [3-100, 3-310]
APPROVE
- Rule 1.8.13 Imputation of Personal Conflicts [N/A]
APPROVE
- Rule 1.9 Duties to Former Clients [3-310]
APPROVE
- Rule 1.10 Imputation of Conflicts: General Rule [N/A]
APPROVE WITH MODIFICATIONS (to mimic ABA Model Rule 1.10)
- Rule 1.12 Former Judge, Arbitrator, Mediator [N/A]
APPROVE WITH MODIFICATIONS – see comments
- Rule 1.14 Client with Diminished Capacity [N/A]
APPROVE
- Rule 2.1 Advisor [N/A]
APPROVE
- Rule 3.8 Responsibilities of a Prosecutor [5-110]
NO POSITION TAKEN – see comments
- Rule 8.5 Choice of Law [1-100(D)] SIMMONS
APPROVE

SDCBA Legal Ethics Committee
Comments to Revisions to Rules of Professional Conduct (RPC) Batch 5
SDCBA Legal Ethics Committee Deadline October 8, 2009
Subcommittee Deadline October 26, 2009
State Bar Comment Deadline November 13, 2009

LEC Rule Volunteer Name(s): [sic]

Old Rule No./Title: N/A

Proposed New Rule No./ Title: 1.8.13 **Imputation of Personal Conflicts**

QUESTIONS (please use separate sheets of paper as necessary):

(1) Is the **policy** behind the new rule correct? If “yes,” please proceed to the next question. If “no,” please elaborate, and proceed to Question #4.

Yes No

(2) Is the new rule **practical** for attorneys to follow? If “yes,” please proceed to the next question. If “no,” please elaborate, and then proceed to the Conclusions section.

Yes No

(3) Is the new rule **worded correctly and clearly**? If “yes,” please proceed to the Conclusions section. If “no,” please elaborate, and then proceed to the Conclusions section.

Yes No

(4) Is the policy behind the existing rule correct? If “yes,” please proceed to the Conclusions section. If “no,” please elaborate, and then proceed to the Conclusions section.

Yes No

(5) Do you have any other comments about the proposed rule? If so, please elaborate here:

CONCLUSIONS (pick one):

We approve the new rule in its entirety.

We approve the new rule with modifications.*

We disapprove the new rule and support keeping the old rule.

We disapprove the new rule and recommend a rule entirely different from either the old or new rule.*

We abstain from voting on the new rule but submit comments for your consideration.*



THE STATE BAR OF CALIFORNIA

PROPOSED RULES OF PROFESSIONAL CONDUCT

PUBLIC COMMENT FORM

INSTRUCTIONS: This form allows you to submit your comments by entering them into the text box below and/or by uploading files as attachments. We ask that you comment on *one* Rule per form submission and that you choose the proposed Rule from the drop-down box below.

All information submitted is regarded as public record.

DEADLINE TO SUBMIT COMMENT IS: NOVEMBER 13, 2009

Your Information

Professional Affiliation Commenting on behalf of an organization Yes No

* Name

* City

* State

* Email address (You will receive a copy of your comment submission.)

The following proposed rules can be viewed by clicking on the links below:

- [Rule 1.2 \[n/a\]](#) [Rule 1.9 \[3-310\]](#) [Rule 2.1 \[n/a\]](#)
- [Rule 1.6 \[3-100\]](#) [Rule 1.10 \[n/a\]](#) [Rule 3.8 \[5-110\]](#)
- [Rule 1.8.2 \[n/a\]](#) [Rule 1.12 \[n/a\]](#) [Rule 8.5 \[1-100\(D\)\]](#)
- [Rule 1.8.13 \[n/a\]](#) [Rule 1.14 \[n/a\]](#) [Discussion Draft \[all rules\]](#)

* Select the Proposed Rule that you would like to comment on from the drop down list.

From the choices below, we ask that you indicate your position on the Proposed rule. This is not required and you may type a comment below or provide an attachment regardless of whether you indicate your position from the choices.

- AGREE with this proposed Rule
- DISAGREE with this proposed Rule
- AGREE ONLY IF MODIFIED

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.

**RRC – Rule 1.8.13 [MR 1.8(k) & 3-310]
E-mails, etc. – Revised (1/19/2010)**

September 3, 2009 KEM E-mail to Difuntorum, cc McCurdy & Lee: 19

December 14, 2009 McCurdy E-mail to Drafters (Tuft, Kehr, Melchior, KEM, Snyder), cc Chair, Vice-Chairs & Staff: 20

December 17, 2009 Tuft E-mail to Drafters, cc Chair & Staff: 21

December 17, 2009 Kehr E-mail to Drafters, cc Chair & Staff:..... 21

December 17, 2009 Tuft E-mail to Kehr & KEM, cc Drafters, Chair & Staff: 21

December 26, 2009 Kehr E-mail to Difuntorum & KEM, cc Drafters, Chair & Staff:..... 21

January 2, 2010 KEM E-mail to Kehr, cc Drafters, Chair & Staff:..... 21

January 5, 2010 Kehr E-mail to KEM, cc Drafters, Chair & Staff:..... 22

January 5, 2010 Melchior E-mail to Drafters, cc Chair & Staff: 22

January 5, 2010 Snyder E-mail to Drafters, cc Chair & Staff:..... 22

January 6, 2010 Lee E-mail to KEM, cc Difuntorum & McCurdy: 22

January 6, 2010 KEM E-mail to Lee, cc Difuntorum & McCurdy: 23

January 19, 2010 Sondheim E-mail to RRC: 23

December 14, 2009 McCurdy E-mail to Drafters (Tuft, Kehr, Melchior, KEM, Snyder), cc Chair, Vice-Chairs & Staff:

Rule 1.8.13 Drafting Team (TUFT, Kehr, Melchior, Mohr, Snyder):

This message provides the assignment background materials for Rule 1.8.13 on the January agenda. **The assignment deadline is Monday, January 11, 2010.**

This message includes the following draft documents:

1. public comment compilation (full text of comment letters received)
2. public commenter chart (a staff prepared chart with the synopsis of comments in draft form and open third column for the codrafters recommended response to the comments)
3. dashboard (staff prepared template)
4. introduction (text of public comment version of the introduction – this should be updated if there are any recommended amendments to the rule)
5. Model Rule comparison chart (version of chart as issued for public comment)
6. clean rule text (public comment version – use this clean version to make any changes to the rule, do not edit the rule in the Model Rule comparison chart)
7. state variations excerpt (this does not require any work)

The codrafters are assigned to review any written comments received and to prepare a revised draft rule and comment, if any changes are recommended. The “RRC Response” column on the public commenter chart should be filled in with the drafting team’s recommended action in response to the public comment. In addition, we need the drafting team to prepare a completed dashboard, and to update, as needed, the Introduction, and the Explanations in the third column of the Model Rule comparison chart based on the revised rule. Please do not edit the redline-middle column of the Model Rule comparison chart. Staff is available to generate a new redline of the post public comment rule to the Model Rule and will assist in completing the middle column of the Model Rule comparison chart.

We are looking for submissions that are as close to final form as possible. As noted above, please feel free to send us your revised clean version of the proposed rule and we will generate a redline comparison to the Model Rule for the comparison chart. Of course, you will still need to complete the Explanation column of the Model Rule Comparison Chart. Lastly, if among the drafters there is a minority view, please consider including the minority view in your draft Introduction.

Attached:

- RRC - 3-310 [1-8-13] - Dashboard - ADOPT- DFT1.1 (09-01-09).doc
- RRC - 3-310 [1-8-13] - Compare - Introduction - DFT3 (09-02-09)RD-MLT.doc
- RRC - 3-310 [1-8-13] - Compare - Rule Explanation - DFT1.1 (08-05-09)3.doc
- RRC - 3-310 [1-8-13] - Compare - Comment Explanation - DFT1.1 (08-05-09)3.doc
- RRC - 3-310 [1-8-13] - Rule - DFT9 (09-01-09) - CLEAN-LAND.doc
- RRC - 3-310 [1-8-13] - Public Comments Complete (12-14-09).pdf
- RRC - 3-310 [1-8-13] - Public Comment Chart - By Commenter - DFT1 (12-14-09)AT.doc
- RRC - 3-310 [1-8-3] - State Variations (2009).pdf

December 17, 2009 Tuft E-mail to Drafters, cc Chair & Staff:

I will be out of the country from the end of this month until January 11. Could one of my fellow co-drafters take the lead on preparing the agenda materials for this item by the January 11 deadline?

December 17, 2009 Kehr E-mail to Drafters, cc Chair & Staff:

I'll try to pick up 1.8.13 as soon as I'm done with 1.7.

December 17, 2009 Tuft E-mail to Kehr & KEM, cc Drafters, Chair & Staff:

Thank you, Bob and Kevin. I will try to get you both my comments before I leave next week.

December 26, 2009 Kehr E-mail to Difuntorum & KEM, cc Drafters, Chair & Staff:

I have begun to look at the materials on this and have a threshold question. The Commission moved Rule 1.8.11_3-320 into Rule 1.7(d). Has there been any decision on what to do with the Rule 1.8 numbering? Are we going to leave a gap where 1.8.11 used to be, or are we going to collapse the numbering. If the latter is the decision, 1.8.13 and 1.8.12 would be renumbered. I can't locate any decision or even discussion on this. This needs to be decided to complete the 1.8.13 drafting.

January 2, 2010 KEM E-mail to Kehr, cc Drafters, Chair & Staff:

I wondered the same thing after we moved the substance of 1.8.11 into 1.7(d). Here are my thoughts:

1. We should keep our parallel numbering system to the extent possible, i.e., leave a space (i.e., "[RESERVED]") for what would have been 1.8.4 (publicity rights) -- which we rejected at our last meeting -- and match up 1.8.5 to 1.8(e), 1.8.6 to 1.8(f), etc.
2. At the last meeting, however, we also rejected a counterpart to 1.8(i) ["1.8.9"] (acquiring a proprietary interest in litigation). Rather than leave a blank there, I recommend moving what is now 1.8.12, which has no counterpart in the Model Rule but carries forward 4-300 (purchasing property at a foreclosure sale) into the 1.8.9 slot.
3. We can then renumber 1.8.13 as 1.8.11, which matches up w/ 1.8(k). I don't think we should leave 1.8.11 as "reserved" because that could cause confusion for someone who is expecting to find the Rule 1.8 imputation provision there.
4. However, I think you can do the drafting w/o making any decision on the numbering yet. Just keep the numbers as are, bracket and/or highlight the internal cross-references to other rules w/in the eight series, and staff can implement any decision that Commission makes at the next meeting.

January 5, 2010 Kehr E-mail to KEM, cc Drafters, Chair & Staff:

I've now had the chance to look at this. Making these changes will cause no end of confusion in our personal record keeping, but your recommendation seems to me to make at least as much sense as any of the alternatives that I've been able to identify. I will go ahead and make these changes in Rule 1.8.11 (formerly 1.8.13). I then suggest that the Rule 1.8.11 agenda materials be circulated with your 1/2/10 message.

California doesn't now have an imputation provision that parallels what now will be 1.8.11. I've edited the Dashboard accordingly but have not removed the checked box (b/c I don't know how).

I've attached drafts of the Introduction, Dashboard, clean Rule, Rule and Comment explanations (without the changes needed to the middle columns), and commenter chart.

Attached:

Dashboard, Draft 2 (1/5/10)
Introduction, Draft 4 (1/5/10)
Rule Comparison Chart, Draft 2 (1/5/10)
Comment Comparison Chart, Draft 2 (1/5/10)
Public Comment Chart, Draft 2 (1/5/10)

January 5, 2010 Melchior E-mail to Drafters, cc Chair & Staff:

Unless I'm missing something (probably), this seems like apple pie to me.

January 5, 2010 Snyder E-mail to Drafters, cc Chair & Staff:

This is fine with me. My thanks to Kevin and Bob for all their work.

January 6, 2010 Lee E-mail to KEM, cc Difuntorum & McCurdy:

Attached you will find all the documents for Rule 1.8.11 (formerly known as 1.8.13). Randy asked me to clean up Bob's clean draft and modify the comparison tables to track the changes that were made in the clean version. I have also updated the version numbers in the footers to make them consistent and modified the dashboard as Bob requested. One thing that I did not touch, is the Introduction. Bob has a lot of strikeout in the Introduction which Randy asked me to leave so that you can review the changes he wants to make. After you have done so, either you or I can clean it up as the final version. Let me know if you have any questions.

Attached:

RRC - 3-310 [1-8-13] - Dashboard - ADOPT - DFT2 (01-05-10)ML.doc
RRC - 3-310 [1-8-13] - Compare - Introduction - DFT4.1 (01-06-10)ML.doc
RRC - 3-310 [1-8-13] - Compare - Rule Explanation - DFT2.1 (01-05-09)ML.doc
RRC - 3-310 [1-8-13] - Compare - Comment Explanation - DFT2.1 (01-05-10)ML.doc
RRC - 3-310 [1-8-13] - Rule - DFT2.1 (01-05-09)ML - CLEAN-LAND.doc
RRC - 3-310 [1-8-13] - Public Comment Chart - By Commenter - DFT2 (01-05-10)RLK.doc
RRC - 3-310 [1-8-13] - State Variations (2009).doc

January 6, 2010 KEM E-mail to Lee, cc Difuntorum & McCurdy:

I went through and for the most part the documents were fine. However, the title was listed incorrectly (it should refer to Rules 1.8.1 through 1.8.9, not 1.8.8), so I changed the documents. I also added a footer to the Dashboard, deleted the text box under "Not Controversial" (we no longer give explanations for non-controversial rules), removed Bob's markings in the Introduction and correct the subtitle, and corrected the reference to Rule 1.9 in both the Rule and the Comment. Rule 1.9 [formerly Rule 1.8.12] is not personal, and so a prohibition under that rule is imputed to all the lawyers in the firm. The only rule that is personal now is Rule 1.8.10. So, I've attached the following (my changes are highlighted in yellow):

1. Dashboard, Draft 2.1 (1/6/10)ML-KEM;
2. Introduction, Draft 4.2 (1/6/10)ML-KEM;
3. Rule Comparison Chart, Draft 2.2 (1/6/10)ML-KEM;
4. Comment Comparison Chart, Draft 2.2 (1/6/10)ML-KEM;
5. Rule, Draft 2.2 (1/6/10)ML-KEM.
6. Public Comment Chart, Draft 2.1 (1/5/10)RLK. I changed "Commentator" to "Commenter" in the second column.

Please let me know if you have any questions. Thanks,

Kevin

P.S. I left the file names as 1-8-13 so as not to confuse them with the files I have for the now discarded rule 1.8.11. Eventually, I'll change them on my end; no reason not to do so on your end.

January 19, 2010 Sondheim E-mail to RRC:

This rule appears non-controversial and therefore all we need to do is vote on it.