

Proposed Rule 8.1.1[RPC 1-110] “Compliance with Conditions of Discipline and Agreements in Lieu of Discipline.”

(Draft #2, 7/3/07)

Summary: Proposed Rule 8.1.1 amends current rule 1-110 and continues the requirement that a lawyer comply with the terms and conditions attached to agreement made in lieu of discipline, probation or reprovls. No substantive changes are recommended to the current rule. The Commission’s recommended revisions are intended for brevity and clarity.

Comparison with ABA Counterpart

Rule	Comment
<input type="checkbox"/> ABA Model Rule substantially adopted	<input 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 checked="" type="checkbox"/> No ABA Model Rule counterpart	<input checked="" type="checkbox"/> No ABA Model Rule counterpart

Primary Factors Considered

Existing California Law

Rules RPC Rule 1-110

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

(14 Members Total – votes recorded may be less than 14 due to member absences)

Approved on 10-day Ballot, Less than Six Members Opposing Public Comment Distribution

Vote (see tally below)

Favor Rule as Recommended for Adoption _____

Opposed Rule as Recommended for Adoption _____

Abstain _____

Approved on Consent Calendar

Approved by consensus

Minority/Position Included on Model Rule Comparison Chart: Yes No

Stakeholders and Level of Controversy

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 8.1.1* Compliance with Conditions of Discipline and Agreements in Lieu of Discipline

October 2009

(Draft rule following consideration of public comment)

INTRODUCTION:

Proposed Rule 8.1.1 amends current rule 1-110 and continues the requirement that a lawyer comply with the terms and conditions attached to agreement made in lieu of discipline, probation or reprobals. No substantive changes are recommended to the current rule. The Commission's recommended revisions are intended for brevity and clarity.

There is no corresponding ABA Model Rule. However, there is a comparable rule in the ABA Model Rules of Disciplinary Enforcement. Rule 10(B) of the Model Rules of Disciplinary Enforcement states, "Conditions. Written conditions may be attached to an admonition or a reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent." Proposed Rule 8.1.1 is more specific to the California disciplinary process.

* Proposed Rule 8.1.1, Draft 2 (7/3/07).

<p align="center">California Rule of Professional Conduct Rule 1-110 Disciplinary Authority of the State Bar</p>	<p align="center">Commission’s Proposed Rule* Rule 8.1.1 <u>Compliance with Conditions of Discipline and Agreements in Lieu of Discipline</u>Disciplinary Authority of the State Bar</p>	<p align="center"><u>Explanation of Changes to the California Rule of Professional Conduct</u></p>
<p>A member shall comply with conditions attached to public or private reprovls or other discipline administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 9.19, California Rules of Court. (Amended by order of the Supreme Court, operative July 11, 2008.)</p>	<p>A member shall comply with <u>the terms and conditions attached to any agreement made in lieu of discipline, disciplinary probation, and</u> public or private reprovls, or other discipline administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 9.19, California Rules of Court</p> <p align="center"><i>(Comparison continued in Comment below.)</i></p>	<p>The rule has been renamed to better describe the conduct the rule addresses.</p> <p>The phrase “the terms and” has been added to “conditions” to more accurately describe the scope of the member’s duty to comply under the rule.</p> <p>The clause “any agreement made in lieu of discipline, disciplinary probation, and” has been added to “public or private reprovls” to identify with more particularity the kinds of arrangements in which terms and conditions may be imposed on the member.</p> <p>Reference to the sections of the Business & Professions Code and Court Rules under which sanctions may be imposed on members has been deleted. The Commission regarded the references as surplusage and potentially confusing because the references focus on the source of the authority for the imposition of conditions rather than identifying the circumstances where conditions are imposed.</p>

* Redline/strikeout showing changes to the ABA Model Rule

California Rule of Professional Conduct Rule 1-110 Disciplinary Authority of the State Bar Comment	Commission's Proposed Rule* Rule 8.1.1 Compliance with Conditions of Discipline Comment	Explanation of Changes to the California Rule of Professional Conduct
	<p>[1] Other provisions also require a lawyer to comply with conditions of discipline. (See, e.g., Business and Professions Code sections 6077 and 6078 6068, subdivisions (k) & (l) and rule 956, California Rules of Court, Rule 9.19.)</p>	<p>The Comment was added to alert lawyers to other law (e.g., Bus. & Prof. Code §§ 6068(k), (l), and Cal. Rule of Court 956), under which terms and conditions of compliance may be imposed.</p>

* Redline/strikeout showing changes to the ABA Model Rule

**Rule 8.1.1 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline.
[Sorted by Commenter]**

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

No.	Commentator	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	San Diego County Bar Association	A			Supports as drafted	No action needed
2						
3						
4						
5						

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

Table of Contents

November 10, 2006 Kehr E-mail to RRC:..... 1
August 27, 2009 McCurdy E-mail to Lamport, cc Chair, Vapnek, Tuft & Staff: 2
September 18, 2009 McCurdy E-mail to Drafter (Lamport), cc RRC:..... 4
October 7, 2009 Lamport E-mail to McCurdy & Lee, cc Chair, Difuntorum & KEM:..... 4
October 7, 2009 Difuntorum E-mail to Lamport, cc McCurdy & Lee, cc Chair, & KEM: 4
October 7, 2009 Lamport E-mail to Difuntorum, McCurdy & Lee, cc Chair, & KEM:..... 4
October 7, 2009 Difuntorum E-mail to KEM, cc Lamport, Chair & Staff: 5
October 7, 2009 Sondheim E-mail to Difuntorum, cc Lamport & Staff: 5
October 10, 2009 Kehr E-mail to RRC:..... 5

August 27, 2009 McCurdy E-mail to Lamport, cc Chair, Vapnek, Tuft & Staff:

Given the recent measures taken to expedite the completion of the rule revision project, the purpose of this letter is to lay out the assignments for which you are a lead drafter that are scheduled to be discussed during the Commission's upcoming September, October and November meetings. A "rolling assignments agenda" is enclosed that covers all of the matters that must be completed at those meetings. This agenda format is being used due to the short turnaround time between these meetings and the interest of many Commission members in working on assignments for future meetings when they have an opportunity to do so. The assignments are considered "rolling" because, for example, any rule that is not completed at the September meeting should be treated as automatically re-assigned and carried forward to the October meeting. Accordingly, the Commission is facing a significant challenge to complete fully each assigned rule in order to avoid a domino effect of rules that are not finished.

Because the Commission has been given a mandate to meet a rigorous schedule of deliverables to the Board for action, it is very important that all assignments be submitted by the assignment due dates. As emphasized by the Chair, if a lead drafter anticipates a conflict, or a conflict unexpectedly arises, that interferes with the ability to complete an assignment, the lead drafter must take the initiative to make alternate arrangements with the codrafters so that the assignment can be submitted by the due date.

Below is a list of your lead draft assignments for the next meeting, September 11, 2009, to be held at the San Diego State Bar Annual Meeting. Enclosed are materials for those assignments. Below that list is a list of assignments for the subsequent meetings in November and October. Materials for those assignments will be distributed soon. If you need any those materials immediately, then please send me an email with a copy to Randy and Kevin. Codrafter responsibilities are not listed. Please refer to the rolling agenda document which identifies the drafting team for each rule assignment. In addition staff will prepare an updated chart listing all rule assignments by Commission member.

Your continued hard work and dedication to this important project is appreciated, and don't forget that staff and the Commission Consultant are here to help so please feel free to contact us for assistance.

ASSIGNMENTS FOR SEPTEMBER MEETING

September 11, 2009 Meeting

Assignments Due: Wed., 9/2/09

1. **III.E. Rule 1.5.1 Financial Arrangements Among Lawyers [2-200]** (Dec. 2008 Comparison Chart – Post Public Comment Rule Draft #8.1 dated 6/9/07)

Codrafters: Julien, Sapiro, Vapnek

Assignment: (1) a chart comparing proposed Rule 1.5.1 to MR 1.5(e); (2) a "dashboard" cover sheet; and (3) a chart summarizing the public comment received and the Commission's response.

ASSIGNMENTS FOR OCTOBER MEETING

October 16 & 17, 2009 Meeting

Assignments Due: Wed., 9/30/09

1. **III.Y. Rule 8.1.1 Compliance with Conditions of Discipline [1-110]** (Post Public Comment Draft dated 7/3/07)
Codrafters: None
Assignment: (1) a chart comparing proposed Rule 8.1.1 to RPC 1-110; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

2. **III.JJ. Rule 1.8.1 Business Transactions and Adverse Interests [3-300]** (Post Public Comment Draft #11 dated 11/17/08 to be revised following the January 2009 meeting)
Codrafters: None
Assignment: (1) a chart comparing proposed Rule 1.8.1 to MR 1.8(a); (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

3. **III.KK. Rule 1.13 Organization as Client [3-600]** (Post Public Comment Draft #10 dated 11/7/08)
Codrafters: Foy, Melchior, Mohr, Voogd
Assignment: (1) a chart comparing proposed Rule 1.13 to MR 1.13; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

(NOTE: This is in addition to any assigned rule not completed at the September meeting.)

ASSIGNMENTS FOR NOVEMBER MEETING

November 6 & 7, 2009 Meeting

Assignments Due: Wed., 11/28/09

No lead drafter assignments.

(NOTE: This is in addition to any assigned rule not completed at the September meeting.)

September 18, 2009 McCurdy E-mail to Drafter (Lampert), cc RRC:

Stan:

This message provides the assignment background materials for Rule 8.1.1 on the October agenda. **The assignment deadline is Wednesday, September 30, 2009.**

As previously indicated, the materials provided are templates or drafts. Please don't hesitate to ask for further assistance or additional materials.

Attachments:

- Dashboard, Draft Template (9/18/09)
- Introduction, Template (9/18/09)
- Rule & Comment Chart, Template (9/18/09)
- Public Comment Chart, Draft 1 (9/18/09)

October 7, 2009 Lampert E-mail to McCurdy & Lee, cc Chair, Difuntorum & KEM:

Attached is the introduction, rule comparison and dashboard for Rule 8.1.1. I am not forwarding the response to public comment since no action on my part is required with respect to that document.

Attachments:

- Dashboard, Draft 1 (10/7/09)SWL
- Introduction, Draft 1 (10/7/09)SWL
- Rule & Comment Chart, Draft 1 (10/7/09)SWL

KEM Note: Most recent draft of Public Comment Chart is **Draft 1.1 (10/7/09)SWL-RD**

October 7, 2009 Difuntorum E-mail to Lampert, cc McCurdy & Lee, cc Chair, & KEM:

Mimi relayed your question concerning the deletion of B&P 6077 & 6078. I have no prior meeting notes or action summaries that explain that deletion. However in the Batch 1 interim report to the Supreme Court, **the deletion of the language that includes the code sections is described as deletion of surplusage that might be confusing.** So, your explanation of the changes seems fine to me. Thanks for your usual careful completeness in approaching your assignment.

October 7, 2009 Lampert E-mail to Difuntorum, McCurdy & Lee, cc Chair, & KEM:

Thanks Randy. After I posed the question to Mimi, I went back to batch 1 and found the explanation, which is what I incorporated into the material.

October 7, 2009 Difuntorum E-mail to KEM, cc Lampport, Chair & Staff:

I made footer and other formatting changes that do not impact the content of Stan's fine work. The Word files are attached.

Attachments:

- Dashboard, Draft 1.1 (10/7/09)SWL-RD
- Introduction, Draft 1.1 (10/7/09)SWL-RD
- Rule & Comment Chart, Draft 1.1 (10/7/09)SWL-RD

October 7, 2009 Sondheim E-mail to Difuntorum, cc Lampport & Staff:

I assume that, in accordance with my conversation yesterday with Lauren, these materials, as well as the public comment chart, will be sent by overnight mail to the Commission today.

October 10, 2009 Kehr E-mail to RRC:

I support sending these materials to the Board but have two drafting nits:

1. In line 2 of the Introduction, "reprovals" should be singular.
2. In the second line of the Rule, I would change "and" to "or".