

# 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 reproof. No substantive changes are recommended to the current rule. The Commission’s recommended revisions are intended for brevity and clarity.

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

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## 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)

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## Rule Revision Commission Action/Vote to Recommend Rule Adoption

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

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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

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

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## Stakeholders and Level of Controversy

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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 reproof. 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.

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

<p align="center"><b><u>California Rule of Professional Conduct</u></b>  <b>Rule 1-110 Disciplinary Authority of the State Bar</b></p>	<p align="center"><b><u>Commission’s Proposed Rule*</u></b>  <b>Rule 8.1.1 Disciplinary Authority of the State Bar  Compliance with Conditions of Discipline and  Agreements in Lieu of Discipline</b></p>	<p align="center"><b><u>Explanation of Changes to the California  Rule of Professional Conduct</u></b></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.</p>	<p>A member shall comply with <a href="#">the terms and conditions attached to any agreement made in lieu of discipline, disciplinary probation, and</a> public or private reprovls, <del>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</del></p> <p><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 &amp; 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>

\* No comparable ABA Model Rule. Redline/strikeout showing changes to California Rule 1-110

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

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\* No comparable ABA Model Rule. Redline/strikeout showing changes to California Rule 1-110

## Rule 8.1.1 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline

(Comparison of the Current Proposed Rule to the initial Public Comment Draft)

A ~~lawyer~~member shall comply with the terms and conditions attached to any agreement made in lieu of discipline, disciplinary probation, and public or private reprovais.

### Comment

[1] ~~Other provisions also require a lawyer to comply with conditions of discipline. (See, e.g., Bus. & Prof., Business and Professions Code §section 6068, subdivisions (k) & (l); Cal. Rule-) and California Rules of Court ~~956(b)-~~)~~

**Rule ~~1-110~~—Disciplinary Authority 8.1.1 Compliance with Conditions of the State Bar Discipline and Agreements in Lieu of Discipline**

(Comparison of the Current Proposed Rule to Current California Rule)

*A member shall* comply with the terms and conditions attached to any agreement made in lieu of discipline, disciplinary probation, and public or private reprovls.

**Comment**

~~*A member shall*~~ <sup>[1]</sup> Other provisions also require a lawyer to comply with conditions ~~attached to public or private reprovls or other~~ of discipline ~~administered by the State Bar pursuant to. (See, e.g., Business and Professions Code sections 6077~~ section 6068, subdivisions (k) & (l) and 6078 and rule 9.19, California Rules of Court. ~~(Amended by order of the Supreme Court, operative July 11, 2008~~ Rule 9.19.)

**Rule 8.1.1 Compliance with Conditions of Discipline  
and Agreements in Lieu of Discipline**  
(Commission's Proposed Rule – Clean Version)

A lawyer shall comply with the terms and conditions attached to any agreement made in lieu of discipline, disciplinary probation, and public or private reproofs.

**Comment**

[1] Other provisions also require a lawyer to comply with conditions of discipline. See, e.g., Business and Professions Code section 6068 (k) and (l) and California Rule of Court 9.19.

**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.	Commenter	Position <sup>1</sup>	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	San Diego County Bar Association	A			Supports as drafted	No action needed.

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