

**Rule 1.8.9 [4-300] Purchasing Property at a Foreclosure  
or a Sale Subject to Judicial Review**

**(Commission's Proposed Rule Adopted on November 13 – 14, 2015 – Clean Version)**

- (a) A lawyer shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyer or any lawyer affiliated by reason of personal, business, or professional relationship with that lawyer or 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 probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm\* or is an employee of the lawyer or the lawyer's law firm.\*

**PROPOSED RULE OF PROFESSIONAL CONDUCT 1.8.9**  
**(Current Rule 4-300)**  
**Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) has evaluated current rule 4-300 (Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review) in accordance with the Commission Charter, with a focus on the function of the rule as a disciplinary standard, and with the understanding that the rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. California has had a variation of current rule 4-300 since 1928. However, there is no counterpart to rule 4-300 in the American Bar Association (“ABA”) Model Rules. The result of the Commission’s evaluation is proposed rule 1.8.9 (Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review). This proposed rule has been adopted by the Commission for submission to the Board of Trustees for public comment authorization. A final recommended rule will follow the public comment process.

The main issue considered when drafting this proposed rule was whether the proposed rule’s language should conform to the Probate Code provisions which allow an attorney to purchase a client’s property at a Probate sale under certain circumstances. Current rule 4-300 prohibits a lawyer from purchasing property at various sales under legal process<sup>1</sup> where the lawyer, or any other lawyer affiliated with the lawyer or the lawyer’s firm, is acting either as an attorney for a party or as an executor, receiver, trustee, administrator, guardian, or conservator. The rule also prohibits a lawyer from representing the seller at such a sale in which the buyer is a spouse or relative of the lawyer or another attorney in the lawyer’s firm or is an employee of the lawyer or the lawyer’s firm. However, current rule 4-300 conflicts with Probate Code sections 9880-9885, which do permit a lawyer for an estate’s personal representative to make *probate* purchases, upon court order authorizing the purchase, provided all known heirs and devisees are notified and consent.<sup>2</sup> Thus, at least with respect to probate sales, rule 4-300 conflicts with the Probate Code.

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<sup>1</sup> These sales include a probate, foreclosure, receiver’s, trustee’s, or judicial sale.

<sup>2</sup> Probate Code §§ 9881 and 9882 provide:

**9881.** Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative’s attorney to purchase property of the estate if all of the following requirements are satisfied:

(a) Written consent to the purchase is signed by (1) each known heir whose interest in the estate would be affected by the proposed purchase and (2) each known devisee whose interest in the estate would be affected by the proposed purchase.

(b) The written consents are filed with the court.

(c) The purchase is shown to be to the advantage of the estate.

**9882.** Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative’s attorney to purchase property of the estate if the will of the decedent authorizes the personal representative or the personal representative’s attorney to purchase the property.

After careful consideration of whether to conform the current rule to the Probate Code, the Commission has approved retaining current rule 4-300, revised to incorporate the Commission's global changes, i.e., Model Rule numbering, format and style and substitution of the word "lawyer" for "member."

There are several reasons for the Commission's recommendation. First, when the Supreme Court approved rule 4-300, effective September 14, 1992, the Supreme Court was fully aware of the conflict that existed between the Probate Code sections and the rule. The Supreme Court rule filing seeking Supreme Court approval of the current rule explained the conflict between the rule and the Probate Code. Notwithstanding the described conflict, the Supreme Court approved rule 4-300 with the more stringent protections. Second, rule 4-300 reflects a substantial and long-standing ethical policy in California that prohibits an attorney from purchasing, directly or indirectly, any property at a probate, foreclosure, or judicial sale in which the attorney represents a party. Lawyers have been disciplined for this misconduct.<sup>3</sup> Accordingly, the fact that the Probate Code allows such purchases should not vitiate a lawyer's obligation to comply with a higher ethical standard imposed by a rule approved by the Supreme Court. Third, the Commission is not aware of any problems in enforcement that have arisen in the intervening 24 years of the rule's coexistence with the Probate Code sections. The Commission believes that under appropriate circumstances the Rules can and should hold lawyers to a higher standard than corresponding statutory law. Lastly, the Office of the Chief Trial Counsel has on three separate occasions submitted a comment urging the prior Commission to recommend adoption of current rule 4-300's absolute prohibition despite the existence of the conflicting Probate Code sections.

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<sup>3</sup> See *Eschwig v. State Bar* (1969) 1 Cal. 3d 8 (attorney purchased principal asset of estate while representing executor in probate proceeding); *Marlowe v. State Bar* (1965) 63 Cal. 2d 304 (purchase of second deed of trust by wife of attorney deemed adverse to client where the property constituted the major, if not the only, source from which client could recover alimony payments); *Ames v. State Bar* (1973) 8 Cal.3d 910 (an attorney "must avoid circumstances where it is reasonably foreseeable that his acquisition may be detrimental, i.e., adverse, to the interests of his client.").



**Rule 1.8.9 [4-300] Purchasing Property at a Foreclosure  
or a Sale Subject to Judicial Review  
(Redline Comparison of the Proposed Rule to Current California Rule)**

- (Aa) A ~~member~~lawyer shall not directly or indirectly purchase property at a probate, foreclosure, ~~receiver's, trustee's~~receiver's, trustee's, or judicial sale in an action or proceeding in which such ~~member~~lawyer or any lawyer affiliated by reason of personal, business, or professional relationship with that ~~member~~lawyer or with that ~~member's~~lawyer's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.
  
- (Bb) A ~~member~~lawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the ~~member~~lawyer or of another lawyer in the ~~member's~~lawyer's law firm\* or is an employee of the ~~member~~lawyer or the ~~member's~~lawyer's law firm.\*

## **COMMISSION PROVISIONAL REPORT AND RECOMMENDATION: RULE 1.8.9 [4-300]**

### **Commission Drafting Team Information**

**Lead Drafter:** Carol Langford

**Co-Drafters:** Nanci Clinch, Raul Martinez, Judge Dean Stout

**Meeting Dates at which the Rule was discussed:** November 13 – 14, 2015

**Action Summary Approval Date:** January 22, 2016

### **I. CURRENT CALIFORNIA RULE**

#### **Rule 4-300 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

- (A) A member shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such member or any lawyer affiliated by reason of personal, business, or professional relationship with that member or with that member's law firm is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.
- (B) A member shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the member or of another lawyer in the member's law firm or is an employee of the member or the member's law firm.

### **II. COMMISSION'S RECOMMENDATION AND VOTE**

The Commission voted to recommend a proposed amended rule as set forth below in Section III.

All members present voted to recommend adoption of the proposed rule with the exception of Mr. Kehr who voted no.

### **III. PROPOSED RULE 1.8.9 [4-300] (CLEAN)**

#### **Rule 1.8.9 [4-300] Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

- (a) A lawyer shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyer or any lawyer affiliated by reason of personal, business, or professional relationship with that lawyer or 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 probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm\* or is an employee of the lawyer or the lawyer's law firm.\*

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RULE 1.8.9 [4-300]**

**IV. COMMISSION'S PROPOSED RULE 1.8.9 [4-300]  
(REDLINE TO CURRENT CALIFORNIA RULE 4-300)**

**Rule 1.8.9 [4-300] Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

- (Aa) A memberlawyer shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such memberlawyer or any lawyer affiliated by reason of personal, business, or professional relationship with that memberlawyer or with that member'slawyer's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.
- (Bb) A memberlawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the memberlawyer or of another lawyer in the member'slawyer's law firm\* or is an employee of the memberlawyer or the member'slawyer's law firm.\*

**V. OCTC / STATE BAR COURT COMMENTS**

- Jayne Kim, OCTC, 10/27/15:

**F. Rule 4-300: Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

1. Rule 4-300 should be retained as currently written. A more permissive rule, even in light of Probate Code sections 9880 through 9885, could undermine the membership's duty of undivided loyalty to its clients and the public's confidence in the profession.

- **State Bar Court:** No comments received from State Bar Court.

**VI. COMPARISON OF PROPOSED RULE TO APPROACHES IN  
OTHER JURISDICTIONS (NATIONAL BACKDROP)**

California has had a variation of rule 4-300 since 1928. There is no ABA Model Rule directly analogous to rule 4-300. Although the first Commission numbered its proposed rule 4-300 successor as Rule 1.8.9, suggesting the rule is analogous to Model Rule 1.8(i), neither RRC1's rule nor current rule 4-300 should be considered analogous to Model Rule 1.8(i), which applies to a lawyer's acquisition of "a proprietary interest in the cause of action or subject matter of litigation," a scope of coverage that is broader (not limited to specific types of sales connected to the litigation) than rule 4-300's.<sup>1</sup>

<sup>1</sup> Model Rule 1.8(i) provides:

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

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California's divergence from ABA rules regulating lawyers with respect to rule 4-300 and its predecessors is long-standing. The 1908 ABA Canons of Professional Ethics, Canon 10, provided: "The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting." In 1928, the State Bar of California adopted its Rules of Professional Conduct, including Rule 8, which provided: "A member of the State Bar shall not directly or indirectly purchase property at a probate, foreclosure or judicial sale in an action or proceeding in which such member appears as attorney for a party." (See, *The State Bar Journal* (July 1928) Vol. III, No.1, p. 17.) There was no rule analogous to ABA Canon 8 in the 1928 Rules, nor has California adopted a rule analogous to current Model Rule 1.8(i) [successor to ABA Canon 8] in the intervening years.

Nevertheless, Model Rule 1.8(a)<sup>2</sup> [ABA counterpart to Cal. Rule 3-300] and its predecessor, ABA Model Code of Professional Responsibility DR 5-104, have been applied to facts that would fall under rule 4-300. For example, in *Iowa Supreme Court Board of Professional Ethics and Conduct v. Stamp* (Iowa 1999) 590 N.W.2d 496, 500, a lawyer who probated an estate was disciplined for violating Iowa rule DR 5-104(A) [the predecessor to MR 1.8(a)], in part, for representing the estate and purchasing stock from the estate without required court approval and at a price substantially below market value. (See also, citations in 35 A.L.R.3d 674 reporting on "Attorney and client: disciplinary proceeding based upon attorney's direct or indirect purchase of client's property.")

Although California is not unique in regulating the described lawyer conduct through discipline, California presently diverges from the approach taken in other jurisdictions by its adoption of a rule specifically regulating a lawyer's purchase of assets at any of the identified types of sales subject to judicial review.

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(2) contract with a client for a reasonable contingent fee in a civil case.

<sup>2</sup> Model rule 1.8(a) is very similar to current California rule 3-300 and provides:

A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

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### VII. CONCEPTS ACCEPTED/REJECTED; CHANGES IN DUTIES; NON-SUBSTANTIVE CHANGES; ALTERNATIVES CONSIDERED

#### A. Introduction: History of Rule 4-300 and related Probate Code sections, and Reasons For the Commission's Recommendation

As noted in Section VI, above, California is unique in its adoption of a rule that regulates a lawyer's purchase of client assets at specific types of sales. Other jurisdictions appear to regulate such transactions by applying their rule corresponding to Model Rule 1.8(a) [Cal. Rule 3-300]. (See Section VI.) This raises the question whether rule 4-300 is still necessary. The Commission concluded it is. Current rule 3-300 [MR 1.8(a)] by its terms refers only to transactions between a lawyer *and a client* or a lawyer's acquisition of a pecuniary interest adverse to a client. Rule 4-300, on the other hand, applies not only to such transactions or interests, but whenever the lawyer or a lawyer in the lawyer's firm is representing a party (e.g., an estate's personal representative) or is acting as an "executor, receiver, trustee, administrator, guardian, or conservator" in the matter. By its terms, rule 4-300 applies to a much broader set of situations than does rule 3-300. Moreover, rule 4-300 provides for an absolute prohibition on lawyer purchases; unlike 3-300, there is no procedure under which a lawyer might obtain the consents of interest persons to the purchases.

However, current rule 4-300 conflicts with Probate Code §§ 9880-9885, which do permit a lawyer for an estate's personal representative to make *probate* purchases, provided all known heirs and devisees are notified and consent, and subject to judicial review.<sup>3</sup> Thus, at least with respect to probate sales, rule 4-300 conflicts with the Probate Code.

In recognition of this conflict, the first Commission ("RRC1") proposed a rule that removed probate sales from the prohibitory language of 4-300(A) and added a rule section that informed

<sup>3</sup> Probate Code §§ 9881 and 9882 provide:

**9881.** Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if all of the following requirements are satisfied:

(a) Written consent to the purchase is signed by (1) each known heir whose interest in the estate would be affected by the proposed purchase and (2) each known devisee whose interest in the estate would be affected by the proposed purchase.

(b) The written consents are filed with the court.

(c) The purchase is shown to be to the advantage of the estate.

**9882.** Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if the will of the decedent authorizes the personal representative or the personal representative's attorney to purchase the property.

See also Probate Code 9880-9885 (2015), attached.

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lawyers of the existence of the Probate Code requirements and added further requirements with which the lawyer must comply, rule 1.8.1 [current rule 3-300] and 1.7 [current rule 3-310(B)].<sup>4</sup>

Because of the conflict between rule 4-300 and the Probate Code sections permitting probate sales to the personal representative's lawyer subject to certain conditions, the Commission thoroughly considered RRC1's proposed rule. However, after consideration of the legislative history and the process by which current rule 4-300 was adopted by the Board and approved by the Supreme Court, the Commission consensus is to recommend retaining current rule 4-300, revised to incorporate the Commission's global changes, i.e., Model Rule numbering, format and style and substitution of "lawyer" for "member."

There are numerous reasons for the Commission's recommendation. *First* and most important, when the Supreme Court approved rule 4-300, effective September 14, 1992, it was fully aware of the conflict that existed between the Probate Code sections and the rule. (See the State Bar's 1991 Supreme Court filing, case #S024408, seeking Supreme Court approval of the current rule, Enclosure 6.) Enclosure 6 fully explained the conflict between the rule and the Probate Code. Notwithstanding the described conflict, the Supreme Court apparently concluded that the more stringent protections afforded by rule 4-300 were warranted. *Second*, Rule 4-300 reflects a substantial and long-standing ethical policy in California that prohibits an attorney from purchasing, directly or indirectly, any property at a probate, foreclosure, or judicial sale in which the attorney represents a party. See *Eschwig v. State Bar* (1969) 1 Cal. 3d 8 (attorney purchased principal asset of estate while representing executor in probate proceeding); *Marlowe v. State Bar* (1965) 63 Cal. 2d 304 (purchase of second deed of trust by wife of attorney deemed adverse to client where the property constituted the major, if not the only, source from which client could recover alimony payments); *Ames v. State Bar* (1973) 8 Cal.3d 910 (an attorney "must avoid circumstances where it is reasonably foreseeable that his acquisition may be detrimental, i.e., adverse, to the interests of his client."). Therefore, the fact that the Probate Code allows such purchases (upon court approval but with limited judicial supervision), does not vitiate a lawyer's obligation to comply with these higher ethical standards. Rules adopted by the Supreme Court can hold lawyers to a higher standard than corresponding legislation. *Third*, the Commission is not aware of any problems in enforcement that have arisen in the intervening 24 years of the rule's coexistence with the Probate Code sections. (See also OCTC Comment, at section V, above.) Fourth, a review of the legislative history has revealed no evidence that either the legislature or the California Law Review Commission, the principal sponsor of the comprehensive revision of Probate Code in 1987 and 1991, considered rule 5-103, the predecessor to rule 4-300, or considered the public protection policies underlying the rule. There is no mention at all of rule 5-103 anywhere in the legislative history, including the California Law Revision Commission's two lengthy reports on the proposed amendments to the Probate Code.

### **B. Concepts Accepted (Pros and Cons):**

1. Retain the substance of the current rule and only revise the language to implement non-substantive terminology and format changes.
  - o Pros: The current rule sets the appropriate standard of public protection and there are

<sup>4</sup> See note 5 for RRC1's proposed Rule 1.8.9.

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no known problems notwithstanding inconsistency with the Probate Code. (See also, OCTC comments in section V and paragraph A (Introduction), above.)

- Cons: There is a risk of confusion in having a rule that subjects a lawyer to discipline even though the conduct is authorized by statutory law.

### C. Concepts Rejected (Pros and Cons):

1. Change the rule to state that it is not a violation for a lawyer to participate in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885; but that such transactions remain subject to other applicable rules, such as the rules governing business transactions with a client [current rule 3-300] and the representation of adverse interests [current rule 3-310]. In effect, this proposal is to adopt RRC1 proposed Rule 1.8.9.<sup>5</sup>
  - Pros: This change would harmonize the rule with statutory law and avoid the potential anomalous result of a lawyer who participates in a legally enforceable probate sale under the Probate Code would nevertheless be subject to discipline.
  - Cons: This change would diminish the existing public protection afforded by the absolute prohibition in current rule 4-300 and facilitate attorney self-dealing. (See also paragraph A (Introduction) and OCTC Comment in section V, above.)

### D. Changes in Duties/Substantive Changes to the Current Rule:

None.

<sup>5</sup> RRC1 proposed Rule 1.8.9 provided:

#### **Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

- (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.

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### E. Non-Substantive Changes to the Current Rule:

1. Substitute the term “lawyer” for “member”.
  - Pros: The current Rules’ use of “member” departs from the approach taken in the rules in every other jurisdiction, all of which use the term lawyer. The Rules apply to all non-members practicing law in the State of California by virtue of a special or temporary admission. For example, those eligible to practice pro hac vice or as military counsel. (See e.g. rules 9.40, 9.41, 9.42, 9.43, 9.44, 9.45, 9.46, 9.47, and 9.48 of the California Rules of Court.)
  - Cons: Retaining “member” would carry forward a term that has been in use in the California Rules for decades.
2. Change the rule number to correspond to the ABA Model Rules numbering and formatting (e.g., lower case letters)
  - Pros: It will facilitate the ability of lawyers from other jurisdictions who are authorized to practice in California (see current rule 1-100(D)(1), which recognizes that reality, and rules such as the rule for *pro hac vice* admission, Rule of Court 9.40) to find the California rule corresponding to their jurisdiction’s rule, thus permitting ease of determining whether California imposes different duties. It will also facilitate the ability of California lawyers to research case law and ethics opinions that address corresponding rules in other jurisdictions, which would be of assistance in complying with duties, particularly when California does not have such authority interpreting the California rule. As to the “Con” that there is a large body of case law that cites to the current rule numbers, the rule numbering was drastically changed in 1989 and there has been no apparent adverse effect. A similar change in rule numbering of the Rules of Court was implemented in 2007, also with no apparent adverse effect.
  - Cons: There is a large body of case law that cites to the current rule numbers and California lawyers are presumed to be familiar with that numbering system.
3. Assign the number 1.8.9 to the proposed rule rather than follow the Model Rule numbering for the 1.8 series of rules, which designates the Model Rule that is rule 4-300’s closest analog as rule 1.8(i).
  - Pros: The Commission agrees with the approach taken by RRC1. RRC1 proposed, and the Board agreed, that California not follow the Model Rules approach of amalgamating in a single rule, numbered 1.8, all personal conflicts rules, regardless of their relationship, that do not fit neatly within the current client, former client, or government lawyer situations addressed in Model Rules 1.7, 1.9 and 1.11, respectively. Instead, to facilitate indexing and make these various provisions easier for lawyers to locate and use by reference to a table of contents, RRC1 recommended that each rule in the 1.8 series be given a separate number. Thus, the counterpart to Model Rule 1.8(a) is 1.8.1, that of Model Rule 1.8(b) is 1.8.2, that of Model Rule 1.8(c) is 1.8.3, and so forth. The correspondence of the decimal number in the proposed 1.8 series rules to the letter in the Model Rule counterpart should nevertheless achieve the uniformity of a national standard that facilitates comparisons with the rule counterparts in the different jurisdictions without sacrificing the ease of access that independently numbered and indexed rules provide.
  - Cons: Not adopting the Model Rule numbering for the 1.8 series of rules could

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hinder the ability of lawyers in other states to research California case law that might interpret and apply the rule.

**F. Alternatives Considered:**  
None.

**VIII. COMMISSION RECOMMENDATION FOR BOARD ACTION**

**Recommendation:**

The Commission recommends that the Board adopt Rule 1.8.9 [4-300] in the form stated above for purposes of public comment authorization as a part of the Commission's proposed comprehensive revisions to the Rule.

**IX. FINAL COMMISSION VOTE/ACTION**

Date of Vote: November 22 – 23, 2015

Action: Approve Rule 1.8.9 [4-300] as revised during the meeting.

Vote: 14 (yes) – 1 (no) – 0 (abstain)