



**THE STATE BAR  
OF CALIFORNIA**

OFFICE OF PROFESSIONAL COMPETENCE,  
PLANNING, AND DEVELOPMENT

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**DATE:** September 25, 2009  
**TO:** Members of the Commission for the Revision of the Rules of Professional Conduct  
**FROM:** Randall Difuntorum, Commission Staff Counsel  
**SUBJECT:** 10-day Ballot Circulation of Proposed Rule 1.8.10 [3-120]

Proposed Rule 1.8.10 [3-120] is being distributed for your consideration. The revisions adopted at the Commission's September 11, 2009 meeting have been implemented and approval of parts of the rule submission is being sought through a 10-day ballot procedure. At the meeting, the rule itself was approved but the Chair indicated that the majority and minority position in the Introduction and the Rule Comparison Table would be handled by a 10-day ballot.

Approval means that the proposed new rule would be cleared for transmission to the Board of Governors with a request that the rule be adopted subject to input received on the Commission's comprehensive Final Report.

In accordance with the guidance provided by the Board, the proposed rule is presented in a comparison chart that compares the Commission's proposed rule and comment to the counterpart ABA Model Rule. The chart includes a general introduction and provides specific explanations for any departures from the ABA Model Rule. The comparison chart is provided as Enclosure 1. A clean version of proposed Rule 1.8.10, Draft 7 (9/12/09), is provided as Enclosure 2. A draft dashboard is provided as Enclosure 3. A draft public commenter chart is provided as Enclosure 4.

Pursuant to the Commission's 10-day ballot procedure, if six or more members object to this proposed rule, then the proposed rule will be placed on the Commission's next agenda for further consideration. Objections should be in writing, explaining reasons for the objection, and sent to me with copies to Lauren McCurdy and Kevin Mohr. **If less than six objections are received by 5 p.m. on Monday, October 5, 2009, proposed Rule 1.8.10 [3-120] will be deemed approved.**

Questions about this mail ballot may be directed to me at (415) 538-2161

Thank you.

Encs.



## **Enclosure 1**

**Proposed Rule 1.8.10 [RPC 3-120]**  
(Comparison Chart Showing Changes to Model Rule 1.8.10)



## COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

### Proposed Rule 1.8.10\* Sexual Relations With Client

September 2009

(Draft rule revised following consideration of public comment)

#### *INTRODUCTION:*

1. Proposed Rule 1.8.10 substantially adopts Model Rule 1.8(j), which prohibits a lawyer from having sexual relations with a client unless a consensual sexual relationship pre-dated the lawyer-client relationship. As the comparison chart illustrates, unlike current California rule 3-120, the Commission has proposed a rule that follows Model Rule 1.8(j) which effectively bans, rather than limits, sexual relations between lawyers and their clients.
2. The version of the Rule that was originally circulated for public comment closely followed current California rule 3-120 in that it limited, but did not ban, virtually all sexual relationships. The Commission originally passed this version of the rule by a vote of 8 to 1.
3. The Commission received four written public comments in favor of a broad Model Rule-type ban and two written comments in favor of the narrower limitation in the current California rule. Also, an attendee at the public hearing spoke in favor of the direction of the Model Rule. After reviewing the public comment, the Commission voted 7 to 6 not to retain the Rule as sent out for public comment. Instead, the Commission voted 8 to 6 to adopt a rule that is identical to Model Rule 1.8(j) in prohibiting all sexual relationships between lawyer and client except for consensual relationships that predate the lawyer-client relationship. At its September 2009 meeting, the Commission confirmed this decision by a 7 to 6 vote.

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\* Proposed Rule, Draft 7 (9/12/09).

*INTRODUCTION (Continued):*

4. In considering the alternatives, the Commission observed that the professions of medicine and psychology have absolute bans similar to the Model Rule, and there is no suggestion that these bans have caused any of the personal or constitutional problems raised by the minority. There also is no suggestion of any such problem in any of the other jurisdictions that have adopted the Model Rule ban. The proponents of the Model Rule ban also argued that a ban would foster public trust in the legal system and that, whether or not one can fairly say that the lawyer-client relationship almost always is unequal, the public naturally will assume the worst about the lawyer's conduct whenever a lawyer engages in a sexual relationship that would be banned by the Model Rule.

5. The majority also notes that the minority's reliance on the argument that the proposed Rule will conflict with Business and Professions Code § 6106.9 and thus is "a denigration of the legislative process," is misplaced. The Supreme Court can impose a higher standard on lawyers than the legislature has done. Thus, there is no "conflict" with section 6106.9 merely because the proposed Rule and the statute would impose different standards of conduct. There is no need, as the minority asserts, to go to the Legislature to "fix" the statute.

6. Those members of the Commission who adhered to its original 8-1 recommendation to retain the concepts underlying current rule 3-120 argued that a virtual ban like that in Model Rule 1.8(j) conflicted with Business and Professions Code § 6106.9, which limits, but does not ban, sexual relations between lawyers and clients. Current rule 3-120 is consistent with section 6106.9. At the public hearing, it was suggested by a member of the public that the Legislature "does not really understand how the rule works," and that it can "fix" the statute to conform to the rule. The Commission minority disagrees and considers this a denigration of the legislative process. However, the fact remains that adoption of 1.8(j) would expand on, and in the view of some members of the Commission, conflict with existing state law.

7. The minority also noted the paucity of empirical evidence suggesting that the current rule is not working in the sense that clients are complaining about improper sexual relationships with their lawyers but not receiving support from State Bar prosecutors, or failing to complain because of enforcement concerns. Therefore, it is highly questionable that enacting a virtual ban on such relationships would provide further protection to the public.

*INTRODUCTION (Continued):*

8. The minority also notes that the proper focus of the ethical rules is the regulation of conduct of individuals as lawyers. The present Rule quite properly prohibits the abuse of a lawyer's "power position" over a client by demanding or obtaining sexual favors; but not every lawyer-client relationship is of such a nature. For example, if an actuary working on employee benefits becomes romantically involved with a lawyer working for the same company on like matters, the power relationship is likely to be equal; or if the chief executive and the chief counsel of a public corporation become romantically involved before their eventual marriage, how is that the business of the Bar? But unlike the present rule, the proposed rule would ban both of these – and many other – relationships, which are clearly not the business of the Bar. We are not the bedroom police. Outside the context of having a deleterious effect on a lawyer-client relationship, the social habits of lawyers that do not reach the level of moral turpitude should not be the subject of disciplinary action by the State Bar. Concern properly arises where such a relationship occurs under circumstances where the professional relationship is compromised. Current rule 3-120 addresses this problem.

9. The minority notes the same criticism can be leveled at the unsupported claim by the State Bar's Committee on Professional Responsibility and Conduct ("COPRAC") that making it easier to prove a violation would also have a salutary effect by inhibiting attorneys from entering into such relations. Apparently, the thinking is that making enforcement incrementally more difficult encourages lawyers to have sexual relations with clients. However, inhibiting lawyers and clients from exercising the right to choose their personal and sexual partners is not necessarily a good thing. There is more than a trivial public interest furthered in not over-regulating consenting sexual relationships between attorneys and clients. For every non-coerced sexual relationship that does not produce a deleterious effect on the attorney's representation, a client is making a choice that presumably is enhancing his or her life. In some cases it may turn out that the personal relationship that develops ultimately between client and attorney transcends in importance the professional relationship. To the extent clients benefit from having the freedom to choose to engage in a sexual relationship with an attorney that does not result in actual harm to their legal matter, a bright-line ban similar to that in Model Rule 1.8(j) will have a chilling effect on that freedom.

10. Additionally, the minority argues that merely banning sexual relations without requiring some nexus to a lawyer's professional duties could encourage personally dissatisfied clients to use the existence of a sexual relationship with a lawyer as retaliation against the attorney for some perceived personal slight or offense. They pointed out that the State Bar disciplinary system should not be a venue in which jealous romantic partners seek vengeance.

*INTRODUCTION (Continued):*

11. As noted, the COPRAC letter concludes with approving references to ABA commentary developed during the discussion concerning Model Rule 1.8(j). Comments such as “the attorney-client relationship is almost always unequal,” and that “it is unlikely a client can provide informed consent due to the ‘client’s own emotional involvement,’” appear to some Commission members to be hyperbolic, overly simplistic conclusions offered to explain complex social interactions, as well as being unduly paternalistic. To the extent these conditions exist in a given relationship resulting from the use of coercion, quid pro quo demands, or causing harm to the attorney-client relationship, current rule 3-120 bans the conduct.

12. The minority also argues that the purported reasons for the new prohibition of sexual relations between lawyer and client are inconsistent with the only exception to the proposed Rule. If it is adopted, a lawyer may represent a client with whom she or he has an existing sexual relationship, regardless of whether the lawyer’s performance of legal services will adversely be affected by that relationship. Conversely, if the proposed Rule is adopted, and a lawyer and client become romantically involved but comply with the Rule by remaining chaste until they marry or become domestic partners, the literal wording of the rule will prohibit them from consummating their otherwise legitimate relationship.

13. Last but perhaps most importantly, the proposed Rule following Model Rule 1.8(j) implicates both the federal and California constitutional rights of sexual privacy. It has long been settled that there is a federal and state constitutional right to sexual privacy. In fact, this penumbra right is one of individual autonomy thereby requiring the existence of a compelling state interest before it can be abridged. (*Griswold v. Connecticut* (1965) 381 U.S. 479) One prong of the “compelling state interest test” is whether the law is narrowly tailored to meet the needs of the public. The U.S. Supreme Court has recently affirmed this tenet of constitutional law, in striking down Texas’ sodomy law. (*Lawrence v. Texas* (2003) 539 U.S. 558) Our state supreme court follows this same analytical path when scrutinizing laws affecting sexual privacy under the California constitution. (*In re Marriage Cases* (2008) 43 Cal.4th 757; see also Mischler, *Reconciling Rapture, Representation, and Responsibility: An Argument Against Per Se Bans on Attorney-Client Sex*, Geo. J. Legal Ethics (Winter 1997).)

14. *A Note on the Rule Number.* As noted, the Rule appears in the Model Rules numbered as 1.8(j). The Commission has not proposed that California follow the Model Rules construct of amalgamating in a single rule, numbered 1.8, all personal conflicts rules, regardless of their relationship, that do not fit neatly within current client, former client, or government lawyer conflict situations addressed in Rules 1.7, 1.9 and 1.11, respectively. Instead, to facilitate indexing and make these various provisions easier to locate and use, the Commission has recommended that each rule in the 1.8 series be given a separate number. Thus, the Commission’s proposed sex with a client rule appears as a stand-alone rule, numbered 1.8.10, to correspond to Model Rule 1.8(j).

<p align="center"><u>ABA Model Rule</u> Rule 1.8(j) Conflict Of Interest: Current Clients: Specific Rules</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.8.10 Sexual Relations With Client</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.</p>	<p>(ja) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the <del>client-lawyer-</del> <a href="#">client</a> relationship commenced.</p>	<p>Paragraph (a) is nearly identical to MR 1.8(j). The only change is to substitute "lawyer-client" for the Model Rules' "client-lawyer" rubric to conform the phrase to the style used in California statutes, e.g., "Lawyer-Client Privilege," Evid. Code §§ 950-962. In addition, "lawyer-client" is typically used in judicial opinions.</p>
	<p>(b) <a href="#">For purposes of this Rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse.</a></p>	<p>Paragraph (b) adds a definition of "sexual relations" (imported verbatim from existing California rule 3-120). The Model Rule does not define "sexual relations".</p>

\* Proposed Rule 1.8.10, Draft 7 (9/12/09).

<p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 1.8(j) Conflict Of Interest: Current Clients: Specific Rules Comments</b></p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center"><b>Rule 1.8.10 Sexual Relations With Client Comments</b></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p><b>Client-Lawyer Sexual Relationships</b></p> <p>[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.</p>	<p><del>Client-Lawyer Sexual Relationships</del></p> <p><del>[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.</del></p>	<p>See Explanation of Changes for Comment [1].</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 1.8(j) Conflict Of Interest: Current Clients: Specific Rules Comments</p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center">Rule 1.8.10 Sexual Relations With Client Comments</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p>[1] <a href="#">This Rule prohibits sexual exploitation by a lawyer in the course of a professional representation. Often, based upon the nature of the underlying representation, a client exhibits great emotional vulnerability and dependence upon the advice and guidance of counsel. Attorneys owe the utmost duty of good faith and fidelity to clients. (See, e.g., <i>Greenbaum v. State Bar</i> (1976) 15 Cal.3d 893, 903 [126 Cal.Rptr. 785]; <i>Alkow v. State Bar</i> (1971) 3 Cal.3d 924, 935 [92 Cal.Rptr. 278]; <i>Cutler v. State Bar</i> (1969) 71 Cal.2d 241, 251 [78 Cal.Rptr 172]; <i>Clancy v. State Bar</i> (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) The relationship between an attorney and client is a fiduciary relationship of the very highest character, and all dealings between an attorney and client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for unfairness. (See, e.g., <i>Giovanazzi v. State Bar</i> (1980) 28 Cal.3d 465, 472 [169 Cal Rptr. 581]; <i>Benson v. State Bar</i> (1975) 13 Cal.3d 581, 586 [119 Cal.Rptr. 297]; <i>Lee v. State Bar</i> (1970) 2 Cal.3d 927, 939 [88 Cal.Rptr. 361]; <i>Clancy v. State Bar</i> (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) Where attorneys exercise undue influence over clients or take unfair advantage of clients, discipline is appropriate. (See, e.g., <i>Magee v. State Bar</i> (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839]; <i>Lantz v. State Bar</i> (1931) 212 Cal. 213 [298 P. 497].) In all client matters, a lawyer must keep clients' interests paramount in the course of the lawyer's representation.</a></p>	<p>Comment [1] replaces Model Rule 1.8, cmt. [17]. While repeating some of the core ethical principles that inform the proposed Rule, Comment [1] cites to California case law supporting the referenced principles.</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 1.8(j) Conflict Of Interest: Current Clients: Specific Rules Comments</b></p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center"><b>Rule 1.8.10 Sexual Relations With Client Comments</b></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).</p>	<p><del>[182]-Sexual relationships that</del> <u>This Rule is not applicable to ongoing consensual sexual relations which predate the client-initiation of the lawyer-client relationship are not prohibited. Issues because</u> <del>issues</del> relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the <del>client-lawyer-client</del> relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be <del>materially limited</del> <u>adversely affected</u> by the relationship. See <del>Rule</del> <u>Rules [1.7(ad) (2conflicts of interest)], 1.1 (competence) and 2.1 (independent judgment).</u></p>	<p>Comment [2] is based on Model Rule 1.8, cmt. [18]. The active voice replaces the passive in the first sentence to conform to California rule drafting convention. The term "adversely affected" has been substituted for the Model Rule's "materially limited" because the Commission has not adopted that term in its proposed Rule 1.7.</p>
<p>[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.</p>	<p><del>[193]</del> When the client is an organization, <del>paragraph (j) of this Rule prohibits</del> <u>is applicable to</u> a lawyer for the organization (whether inside counsel or outside counsel) <del>from having a who has</del> <u>sexual relationship</u> with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters. <u>(See Rule [1.13].)</u></p>	<p>Comment [3] is based on Model Rule 1.8, cmt. [19]. No change in meaning is intended by the changes.</p> <p>The cross-reference to Rule 1.13, concerning the organization as client, refers the lawyer to that Rule for further guidance on the intricacies of representing an organization.</p> <p>The minority argues that the proposed Comment contradicts the rationale underlying the Rule. See Introduction, ¶. 12.</p>

## **Enclosure 2**

**Proposed Rule 1.8.10 [RPC 3-120]**  
Clean Version of Draft 7 (9/12/09)



### Rule 1.8.10 Sexual Relations With Client

- (a) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced.
- (b) For purposes of this Rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse.

### Comment

[1] This Rule prohibits sexual exploitation by a lawyer in the course of a professional representation. Often, based upon the nature of the underlying representation, a client exhibits great emotional vulnerability and dependence upon the advice and guidance of counsel. Attorneys owe the utmost duty of good faith and fidelity to clients. (See, e.g., *Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 903 [126 Cal.Rptr. 785]; *Alkow v. State Bar* (1971) 3 Cal.3d 924, 935 [92 Cal.Rptr. 278]; *Cutler v. State Bar* (1969) 71 Cal.2d 241, 251 [78 Cal.Rptr 172]; *Clancy v. State Bar* (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) The relationship between an attorney and client is a fiduciary relationship of the very highest character, and all dealings between an attorney and client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for unfairness. (See, e.g., *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 472 [169 Cal Rptr. 581]; *Benson v. State Bar* (1975) 13 Cal.3d 581, 586 [119 Cal.Rptr. 297]; *Lee v. State Bar* (1970) 2 Cal.3d 927, 939 [88 Cal.Rptr. 361]; *Clancy v. State Bar* (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) Where attorneys exercise undue influence over clients or take unfair advantage of clients, discipline is appropriate. (See, e.g., *Magee v. State Bar* (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839]; *Lantz v. State Bar* (1931) 212 Cal. 213 [298 P. 497].) In all client matters, a lawyer must keep clients’ interests paramount in the course of the lawyer’s representation.

[2] This Rule is not applicable to ongoing consensual sexual relations which predate the initiation of the lawyer-client relationship because issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the lawyer-client relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer’s ability to represent the client will be adversely affected by the relationship. See Rules [1.7(d) (conflicts of interest)], 1.1 (competence) and 2.1 (independent judgment).

[3] When the client is an organization, this Rule is applicable to a lawyer for the organization (whether inside counsel or outside counsel) who has sexual relations with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization’s legal matters. (See Rule [1.13].)



**Enclosure 3**

**Proposed Rule 1.8.10 [RPC 3-120]  
Draft “Dashboard”**



# Proposed Rule 1.8.10 [RPC 3-120] “Sexual Relations With Client”

(Draft #7, 09/12/09)

**Summary:** Proposed Rule 1.8.10 substantially adopts ABA Model Rule 1.8(j), which prohibits a lawyer from having sexual relations with a client unless a consensual sexual relationship pre-dated the lawyer-client relationship. The proposed Rule differs from the Model Rule in adding a definition of “sexual relations” in paragraph (b), which is imported verbatim from existing California Rule of Professional Conduct 3-120.

## Comparison with ABA Counterpart

**Rule**

**Comment**

- ABA Model Rule substantially adopted
- ABA Model Rule substantially rejected
- Some material additions to ABA Model Rule
- Some material deletions from ABA Model Rule
- No ABA Model Rule counterpart

- ABA Model Rule substantially adopted
- ABA Model Rule substantially rejected
- Some material additions to ABA Model Rule
- Some material deletions from ABA Model Rule
- No ABA Model Rule counterpart

## Primary Factors Considered

- Existing California Law

Rule

RPC 3-120

Statute

Bus. & Prof. Code §§ 6106.8 & 6106.9

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, Fewer than Six Members Opposing Public Comment Distribution

Vote (see tally below)

Favor Rule as Recommended for Adoption 7

Opposed Rule as Recommended for Adoption 6

Abstain 0

Approved on Consent Calendar

Approved by consensus

Minority/Dissenting 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:

See Introduction.

Moderately Controversial – Explanation:

Not Controversial

**Enclosure 4**

**Proposed Rule 1.8.10 [RPC 3-120]**  
(Public Commenter Chart)



**Rule 1.8.10 Sexual Relations With Client.  
[Sorted by Commenter]**

**TOTAL = \_\_ Agree = 1  
Disagree = 4  
Modify = 1  
NI = \_\_**

No.	Commenter	Position <sup>1</sup>	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
4	Crockett, Michael	D	N	1.8.10	The current rule should be continued without any changes.	Commission revised the rule to be a broad prohibition.
3	Gupta, Steve	M	N	1.8.10	The rule should provide for a per se violation and hold lawyers to the same standard as physicians.	Commission revised the rule to be a broad prohibition.
1	Konig, Alan	D	N	1.8.10	The rule is too narrow, the prohibition should not be limited to those situations where competent representation is at risk.	Commission revised the rule to be a broad prohibition.
6	Langford, Carol M.	D	N	1.8.10	The rule should be more of a bright line standard and generally prohibit sex with clients.	Commission revised the rule to be a broad prohibition.
2	Los Angeles County Bar Association	A	Y	1.8.10	Supports as drafted.	Contrary to the public comment proposal supported by the commentator, the Commission revised the rule to be a broad prohibition.
5	San Francisco, Bar Association of	D	Y	1.8.10	This should be a bright line prohibition, a client's case may not be prejudiced and an attorney may have acted competently, but the client may still feel violated  Violations are difficult to prove where consent to sexual relations is invariably asserted by the attorney.	Commission revised the rule to be a broad prohibition.

<sup>1</sup> A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED