PROPOSED RULE OF PROFESSIONAL CONDUCT 1.8.10
(Current Rule 3-120)
Sexual Relations With Client

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct ("Commission") has evaluated current rule 3-120 (Sexual Relations With Client) 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. In addition, the Commission considered the national standard of the American Bar Association ("ABA") counterpart, Model Rule 1.8(j). The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The result of the Commission's evaluation is proposed rule 1.8.10. 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 was whether to retain California's current approach that prohibits sexual relations in limited circumstances where the relations are: (i) required as a condition of a representation; (ii) obtained by coercion, intimidation or undue influence; or (iii) cause the lawyer to perform legal services incompetently; **or** to adopt the approach used in most jurisdictions that follows ABA Model 1.8(j) in prohibiting all sexual relations unless the consensual sexual relationship existed at the time that the lawyer-client relationship commenced.

Proposed rule 1.8.10 substantially adopts Model Rule 1.8(j). The Commission believes that California's current rule renders it difficult to prove a violation in the typical circumstance of consensual sexual relations[1] because the rule is not a bright-line standard. For example, where consensual sexual relations occur, the State Bar must prove that the relations caused the lawyer to perform legal services incompetently. While this might represent a regulatory policy of imposing a least restrictive prohibition on conduct protected under a constitutional right of privacy,[2] it imposes a complexity that is likely frustrating enforcement.[3]

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[1] The current rule also prohibits sexual relations that are not consensual as well as improper conduct seeking sexual relations that may or may not result in the occurrence of any sexual relations (e.g., relations sought or obtained by coercion or as a quid pro quo for receiving legal services for a lawyer). The proposed rule would no longer include these aspects of the current rule. Lawyers would continue to be subject to discipline for such misconduct under both Business and Professions Code § 6106 (acts constituting moral turpitude) and § 6106.9 which is the statutory analog to current rule 3-120. Moving to the Model Rule standard in proposed Rule 1.8.10 is not intended to abrogate these existing statutory prohibitions.

[2] Although the general prohibition in the Commission's proposed rule is more restrictive than the current rule in regards to consensual sexual relations, it is not believed to be unconstitutional. In connection with the work of the first Commission, the State Bar inquired on more than one occasion with other jurisdictions that have the same or similar rule to Model Rule 1.8(j) (most recently in 2012) as to whether their rules have been challenged based on a constitutional right to privacy. No jurisdiction indicated a constitutional challenge and the published disciplinary case law of other states do not show any such challenges.

[3] There are no published California disciplinary cases applying rule 3-120.

The potential for the current rule requirements to frustrate enforcement becomes apparent upon close examination of California's duty of competent representation that is formulated to be consistent with Supreme Court precedent. Discipline case law provides that mere negligence is not a violation of the duty of competence. In *Lewis v. State Bar* (1981) 28 Cal.3d 683 [170 Cal.Rptr. 634], the California Supreme Court reaffirmed this principle stating that: "This court has long recognized the problems inherent in using disciplinary proceedings to punish attorneys for negligence, mistakes in judgment, or lack of experience or legal knowledge." (*Lewis v. State Bar* at p. 688.) As a result of this longstanding interpretation of the duty of competence, even if a lawyer engages in consensual sexual relations that cause an act of simple negligence in the performance of a legal service, the lawyer cannot be held to have violated rule 3-120(B)(3). If the Commission's proposed rule is adopted, this outcome would be different because all consensual sexual relations arising during the lawyer-client relationship would constitute a rule violation regardless of whether the lawyer provided competent legal services.

The Commission also believes that this bright-line prohibition will have a salutary deterrent effect that is not present in the current California rule. Public commentators in connection with the first Commission's project provided anecdotal evidence of misconduct that was not deterred by the current rule. In addition, other professions, such as psychotherapists, have stricter rules that are more protective. By comparison with the restrictions in those professions, retaining the current rule could diminish public confidence in the legal profession.

In adopting the language of Model Rule .1.8(j), proposed Rule 1.8.10 would eliminate the express exception in the current rule that permits sexual relations between lawyers and their spouses. However, the Commission notes that: (1) most other jurisdictions do not have an express spousal exception but have not experienced known problems; and (2) a spouse who later becomes a client would fall under the exception for sexual relations that predate a lawyer-client relationship.

Proposed Rule 1.8.10 retains the definition of sexual relations in the current rule. This is a departure from the rule adopted in most jurisdictions but the Commission believes it is warranted because the definition promotes compliance and because the same definition appears in the statutory prohibition on sexual relations with a client (subdivision (d) of Business and Professions Code section 6106.9). In addition, the proposed rule includes a new comment (Comment [3]) that provides a reference to the statutory prohibition.

Post-Public Comment Revisions

After consideration of public comment, the Commission revised the text of paragraph (a) to include an express exception for sexual relations with a client who is the lawyer's spouse or registered domestic partner. The Commission also added a new paragraph (c) that is intended to value the privacy rights of a client in those circumstances where a person other than the client alleges a violation of the rule. New paragraph (c) was derived in part from the Commission's consideration of the comparable rule in Minnesota. The language in the Minnesota Rule 1.8(j) provides that: "(4) if a party other than the client alleges violation of this paragraph, and the complaint is not summarily dismissed, the Director of the Office of Lawyers Professional Responsibility, in determining whether to investigate the allegation and whether to charge any violation based on the allegations, shall consider the client's statement regarding whether the client would be unduly burdened by the investigation or charge."

In addition, in Comment [1] the Commission removed the brackets around a cross reference to Rule 2.1. The brackets marked the reference to Rule 2.1 as being tentative until the

Commission determined whether to recommend a version of that rule. The Commission has now considered Model Rule 2.1 and is recommending that a version of that rule be a part of the State Bar's comprehensive revisions. Accordingly, the brackets are omitted in the current version of proposed Rule 1.8.10.

(Staff note: The dissent below was submitted in connection with the Commission's current version of proposed rule 1.8.10.)

Commission Member Dissent to the Recommended Adoption of Proposed Rule 1.8.10, Submitted by James Ham

I dissent. While I agree that sexual relations with a client is usually unwise, and that sexual relations involving a quid quo pro, coercion, intimidation or undue influence, or under circumstances where the lawyer's competence is impaired, should subject a lawyer to discipline, I do not support the proposed expansion of the rule to prohibit all sexual relations, under any circumstances, under penalty of discipline.

Without question, some attorney-client relationships involve vulnerable clients and unequal bargaining positions. The existing rule protects the public against attorney misconduct in those cases by making it cause for discipline to engage in sexual relations in exchange for legal services, or under circumstances involving coercion, intimidation, or undue influence.

The proposed rule, however, bans all sexual relations, regardless of circumstance. I agree with the views expressed by members of the public, as well as the Los Angeles County Bar Association opposing this rule, and note the lack of consensus among the members of COPRAC concerning the wisdom of the proposed total ban. The existing rule articulates a proper balance that protects the public against unethical lawyer conduct, while respecting the rights of citizens to be free from overly intrusive and overbroad regulation of private affairs between consenting adults.

There is no empirical or even reliable anecdotal evidence that a complete ban on sexual relations is needed to protect the public or regulate the legal profession effectively. If, under the existing rule, the evidence is insufficient to support attorney discipline, the answer is not to pass a rule dispensing with proof of coercion, undue influence, quid pro quo or lack of competence, and imposing discipline based merely upon the fact that sexual relations occurred. Proponents of a complete ban cannot articulate why a lawyer should be disciplined for sexual relations with a mature, intelligent, consenting adult, in the absence of any *quid pro quo*, coercion, intimidation or undue influence. Nor can the proponents establish that the existing rule presents evidentiary burdens that are unjustified and which cannot be met by complaining witnesses.

The paradigm that all attorney-client relationships involve unequal bargaining power does not apply in many legal relationships and therefore cannot supply the rationale for this rule. Likewise, any attempt to analogize the legal professional to medical professionals or to psychologists is not persuasive because the range of relationships between legal professionals and clients is vastly different, as is the nature of the work performed. A complete ban would infringe personal rights in circumstances where there is no undue influence, coercion or risk to competent representation.

The proposed rule also vests entirely too much discretion in prosecutorial authorities, who may apply the complete ban rule against some, but not others, in an unfair, arbitrary or capricious manner.

Rule 1.8.10 [3-120] Sexual Relations With Current Client
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)

(a) A lawyer shall not engage in sexual relations with a current client who is not the lawyer's spouse or registered domestic partner, 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.

(c) If a person* other than the client alleges a violation of this Rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer under this Rule until the State Bar has attempted to obtain the client's statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

Comment

[1] Although this Rule does not apply to a consensual sexual relationship that exists when a lawyer-client relationship commences, the lawyer nevertheless must comply with all other applicable rules. See, e.g., Rules 1.1, 1.7, and 2.1.

[2] When the client is an organization, this Rule applies 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.

[3] Business and Professions Code § 6106.9, including the requirement that the complaint be verified, applies to charges under subdivision (a) of that section. This Rule and the statute impose different obligations.

Rule 1.8.10 [3-120] Sexual Relations With Current Client
(Commission's Proposed Rule Adopted on October 21–22, 2016 –
Redline to Public Comment Draft Version)

(a) A lawyer shall not engage in sexual relations with a current client who is not the lawyer's spouse or registered domestic partner, 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.

(c) If a person* other than the client alleges a violation of this Rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer under this Rule until the State Bar has attempted to obtain the client's statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

Comment

[1] Although this Rule does not apply to a consensual sexual relationship that exists when a lawyer-client relationship commences, the lawyer nevertheless must comply with all other applicable rules. See, e.g., Rules 1.1 ~~(Competence)~~, 1.7, ~~(Conflicts of Interest: Current Conflicts)~~ and ~~[~~2.1 ~~(Independent Judgment)]~~[1].

[2] When the client is an organization, this Rule applies 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.

[3] Business and Professions Code § 6106.9, including the requirement that the complaint be verified, applies to charges under subdivision (a) of that section. This Rule and the statute impose different obligations.

~~[1] The Rules Revision Commission has not made a recommendation to adopt or reject a counterpart to ABA Model Rule 2.1. This bracketed reference is a placeholder pending a recommendation from the Commission. Consideration of Model Rule 2.1 is anticipated for the Commission's August 26, 2016 meeting.~~

Rule 1.8.10 [3-120] Sexual Relations With Current Client
(Redline Comparison of the Proposed Rule to Current California Rule)

(a) A lawyer shall not engage in sexual relations with a current client who is not the lawyer's spouse or registered domestic partner, unless a consensual sexual relationshipexisted between them when the lawyer-client relationship commenced.

(~~A~~b) For purposes of this ~~rule~~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.

~~(B) A member shall not:~~

~~(1) Require or demand sexual relations with a client incident to or as a condition of any professional representation; or(2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or~~

~~(3) Continue representation of a client with whom the member has sexual relations if such sexual relations cause the member to perform legal services incompetently in violation of rule 3-110.~~

~~(C) Paragraph (B) shall not apply to sexual relations between members and their spouses or to ongoing consensual sexual relationships which predate the initiation of the lawyer-client relationship.~~

~~(D) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this rule solely because of the occurrence of such sexual relations.~~

(c) If a person* other than the client alleges a violation of this Rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer under this Rule until the State Bar has attempted to obtain the client's statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

~~Discussion~~Comment

[1] Although this Rule does not apply to a consensual sexual relationship that exists when a lawyer-client relationship commences, the lawyer nevertheless must comply with all other applicable rules. See, e.g., Rules 1.1, 1.7, and 2.1.

[2] When the client is an organization, this Rule applies 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.

[3] Business and Professions Code § 6106.9, including the requirement that the complaint be verified, applies to charges under subdivision (a) of that section. This Rule and the statute impose different obligations.

~~Rule 3-120 is intended to prohibit 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 member is advised to keep clients' interests paramount in the course of the member's representation.~~

~~For purposes of this rule, if the client is an organization, any individual overseeing the representation shall be deemed to be the client. (See rule 3-600.)~~

~~Although paragraph (C) excludes representation of certain clients from the scope of rule 3-120, such exclusion is not intended to preclude the applicability of other Rules of Professional Conduct, including rule 3-110.~~

Proposed Rule 1.8.10 [3-120] Sexual Relations with Client
Synopsis of Public Comments

TOTAL = 17 *A = 8* *D = 6* *M = 3* *NI = 0*

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/ NI[1]	Rule Section or Cmt.	Comment	RRC Response A = 12 NI = 0
X-2016-2	Johnson, William (7-1-16)	N	D		This proposed rule change is terrible and may violate constitutional rights to privacy, sexual relations, free association and marriage. If a client and a lawyer fall in love, they can move in together, they can get married but they can't have sexual relations? This rule prohibits sexual relations between consenting adults when there is no apparent or actual abuse. This rule should be revised or withdrawn to avoid impinging on individual liberties and constitutionally protected rights.	The Commission considered overbreadth as well as other constitutional issues (such as freedom of association, privacy, and equal protection of the rights of the married and unmarried), but concluded a blanket prohibition was appropriate to protect the public. Eighteen jurisdictions have adopted Model Rule 1.8(j) verbatim. Another 13 have adopted a rule that is similar to MR 1.8(j), i.e., the rules in those states include an absolute ban but also includes additional language, e.g., a definition of "sexual relations." Four jurisdictions have language in the comments to another rule (e.g., Rule 1.7) that is similar to the comments to MR 1.8(j). Four jurisdictions have adopted a rule similar to the Cal. Rule, requiring that the lawyer have obtained sex through coercion, etc. or as a quid pro quo. The Commission is not aware of any published Federal or State Court opinion which has ruled on these constitutional issues in the context of this rule.

[1] A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

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						However, the Commission changed the reference in the rule from "client" to "current client" and added an exception for spouses and registered domestic partners.
X-2016-3	Greenlee, Bruce (7-1-16)	N	D		I am not a fan of either the current rule or the proposed rule. The proposed rule of virtually total prohibition is overbroad. The key question to be asked is not whether [sexual relations] will interfere with an attorney's ability to perform services competently. The key question is whether the client comes to the attorney in a vulnerable position, from which a sexual relationship with the attorney will exploit that vulnerability. I recognize there are drafting challenges in defining the areas in which sex should be off limits without global prohibition. But to avoid unwarranted intrusion into both parties' right to privacy, the effort should made. It is not clear that the definition of "sexual relations" would prohibit oral sex as "touching" connotes only use of hands to most people.	(See response to the comment from William Johnson, X-2016-2, above.)
X-2016-7	Wilson, Ken (7-4-16)	N	D		The proposed rules goes beyond the professional relationship which ought to be the limits of the	(See response to the comment from William Johnson, X-2016-2, above.)

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					Bar Association and invades the private relationship of the individuals. The current rule adequately deals with this situation.	
X-2016-19a	Anderson, Mark (8-1-16)	N	A		We need a bright-line rule here. It is unprofessional to begin an intimate/romantic/sexual relationship with a client while still in the professional relationship. Trying to carve out exceptions only gives rise to endless arguments about them. We should join the vast majority of other states in simply barring these relationships.	The Commission agrees. The proposed rule adopts a bright line test that is based on the corresponding Model Rule 1.8(j), which has been adopted in a majority of jurisdictions. (See above response to the comment from William Johnson.)
X-2016-30	Grossman, Nicholas (8-3-16)	N	D		The proposed rule change is unnecessary. The current rule already protects the public from attorneys looking to sexually take advantage of clients. The proposed rule, preventing any sexual relations between attorneys and clients, is just plain ridiculous. Why is it anyone's business who an attorney sleeps with? There is nothing wrong if an attorney wants to date a client, provided legal work is not done in exchange for sexual services, which the current rule already covers.	(See response to the comment from William Johnson, X-2016-2, above.)
X-2016-34	Bryant, Barbara (8-9-16)	N	A		I strongly support this revision. I have handled, studied, researched, mediated and/or taught hundreds of cases	The Commission thanks the commenter for her support. With respect to the commenter's suggestion re

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					involving sexual harassment and the varying factual settings and techniques in/by which the sexual harassment was carried out. Most of the cases/situations involved people in positions of power harassing people who were dependent on them for some important benefit such as salary, a dwelling, a necessary service, or a favorable outcome to a legal right. Too many of those offenders were attorneys using their position of authority and safety to pressure the client for sex. Too many subterfuges and implicit threats of desertion led to the sexual conduct. It is absolutely unacceptable for this conduct to occur. There needs to be a strict bright line that no sexual conduct is acceptable, that the responsibility for the conduct rests 100% on the attorney to prevent it from happening. I request that the proposed rule be amended further to clearly prohibit "verbal conduct of a sexual nature and/or proposals for sexual conduct." It is often the case that a sexual harasser will start with blatant behavior to test the waters. This by itself puts	discriminatory and harassing conduct, please refer to proposed Rule 8.4.1.

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					undue pressure and implicit threats on the client to go along or stay quiet in the face of sexual talk, or to agree to sexual relations once the representation has concluded.	
X-2016-39	Thomas, Kevin (8-14-16)	N	A		The status quo is awful. Disallowing sex with a client is a cost-free way to protect our most vulnerable citizens.	No response required.
X-2016-43a	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (8-12-16)	Y	D		1. COPRAC does not support adoption of the proposed rule because it is inconsistent with B&P Code § 6106.9. The statute expressly sets a different standard than the proposed rule for the imposition of discipline for a lawyer who engages in a sexual relationship with a client than the one set by the proposed rule. COPRAC believes this inconsistency creates a potential trap for a lawyer. COPRAC believes merely flagging the inconsistency in the Comment to the rule does not solve the problem because it relies on the lawyer looking at the rules rather than relying on the B&P Code.	1. The Supreme Court can establish rules of conduct independent from those established in the Business & Professions Code. See, e.g., *In re Lavine*, 2 Cal. 2d 324, 328, *reh'g denied and opinion modified*, 2 Cal. 2d 324 (1935). The proposed rule is not in conflict with B&P Code Section 6106.9. While Section 6106.9 prohibits sexual relations only under certain specified circumstances, the proposed rule bans sexual relations entirely, and is more strict than Section 6106.9. Further, subdivision (e) of that section applies only to a complaint made pursuant to subdivision (a), not to a complaint made pursuant to Rule 1.8.10. Therefore, the rules are not inconsistent.

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					2. In the event the Commission adopts the rule as proposed, at a minimum, COPRAC urges the Commission to revise Comment [3] to more clearly alert attorneys to the different standards under the rule and section 6106.9. 3. There was no consensus among the Committee members on the separate question of whether they would support adoption of the near blanket prohibition on sexual relations with clients expressed in proposed rule 1.8.10.	2. The Commission declines to make the suggested change. It believes that the comment adequately and succinctly alerts lawyers to the differences between rule and statute ("This Rule and statute impose different obligations.") 3. No response required.
X-2016-44	Copi, Margaret (8-15-16)	N	A		An attorney and his or her client have unequal power in their relationship and the attorney has a fiduciary duty to take care of the interests of the client. It is not a mutual relationship in which the interests of both are equal. All such sexual activity is suspect as potentially coercive and must be avoided to preserve the integrity of the professional relationship. Both Sexual Harassment as a separate matter and consensual sexual relations must be avoided for the protection of the client. This has been standard in medical practice for many years and I find it difficult to understand	No response required.

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					that it is not also the standard in the practice of law. Dual-role relationships in any case are fraught with difficulties, but in this particular case must be forbidden absolutely for the ethical practice of law.	
X-2016-45	Peoples, Bernice (8-16-16)	N	A		This rule should have been written into the founding rules of conduct between Attorney and Client. A sexual relationship would compromise too many cases and cause the court to get bogged down in nonsense instead of real criminal cases. (emphasis in caps in original)	No response required.
X-2016-37	Wade, Margena (8-10-16)	N	A		No lawyer should have sex or personal relationship with a client, unless it's well established before or well after the case. There's too much gray area to allow this.	[Note: This comment was originally submitted for proposed Rule 1.0 but was subsequently moved to the 1.8.10 table because of the substance of the comment.] No response required.
X-2016-46	Johnson, Maxine (8-16-16)	No	M		I have a lawyer as a neighbor and he and his wife have gone throughout the neighborhood suing other neighbors. A lawyer should never have the ability to sue on behalf of a person he or she is either married to or having sex with prior to the lawsuit and benefitting from using the spouse or girlfriends name.	[Note: This comment was originally submitted for proposed Rule 1.0 but was subsequently moved to the 1.8.10 table because of the substance of the comment.] The comment does not raise any issues regarding proposed Rule 1.8.10. The comment appears to raise a concern

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						about a lawyer engaging in vexatious litigation practices. Please see proposed Rule 3.1 [3-200].
X-2016-58	Thompson, Irene (9-1-16)	N	A		It's shocking that this rule does not already exist. Attorneys having sex with clients? Are you kidding? What could possibly go wrong?	No response required.
X-2016-63	Edwards, Lisa (9-15-16)	N	M		I do not think clients and attorneys should be completely barred from dating or sexual relations. I had some incredible attorneys along the way both civil and family law. If down the road I wanted to date them who are you to tell me no. I believe at least 1 year preferably two and drop dead minimum 6 months waiting period from the time the case is completely done or another attorney hired should be in place. Now the married attorney who kissed me while working on my case or the one helping me defend myself from a stalker and telling me he could understand my stalker because he "wouldn't give me up for all the tea in China" need to be held accountable or retrained. I handled it another way but that behavior is abhorrent and clients should know what they can do for assistance.	The Commission changed the reference in the rule from “client” to “current client.” The proposed rule does not regulate sexual relations after the termination of the attorney-client relationship.

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X-2016-66h	San Diego County Bar Association (Riley) (9-15-16)	Y	A		1. We commend and support the Commission's adoption of a rule that prohibits a lawyer having a sexual relationship with a client, unless that relationship pre-existed the attorney-client relationship. Current Rule 3-120, with its "if such sexual relations cause the member to perform legal services incompetently in violation of rule 3-110," could be simply an excuse for the rationalization of conduct that should be prohibited unless the individuals had a personal relationship before the lawyer was engaged. 2. We observe, however, that neither the proposed rule nor any Comment addresses how long the prohibition lasts— until the conclusion of the matter for which the attorney is engaged; for some period after the attorney-client relationship ends; whether formal indicia of termination of the attorney-client relationship are required or preferred? We believe some guidance would be helpful, especially given the often volatile mix of professional and personal relationships.	1. No response required. 2. The Commission understands the commenter's request for further guidance on the duration of the rule's effect in prohibiting sexual relations between lawyer and client. However, the Commission's Charter directs the Commission to minimize the number of comments. The guidance issues raised by the commenter are better left for ethics opinions.
X-2016-76f	Los Angeles County Bar Association Professional Responsibility and Ethics	Y	M		1. PREC opposes the adoption of Proposed Rule 1.8.10 in its current form. While the proposed	1. See response to the comment from William Johnson, X-2016-2, above.

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	Committee (PREC) (9-23-16)				rule is consistent with the ABA Model Rule, it is much more restrictive than our current rule on sexual relations (Rule 3-120), and prohibits ALL sexual relations with clients, except for those that existed at the time the attorney-client relationship commenced (contrasted with our current rule, which essentially prohibits coercion, intimation and undue influence in entering into sexual relations with a client). While such a bright line test might make sense in certain practice areas (e.g., criminal law and family law cases), it is patronizing to clients and unreasonably prohibitive where the client is sophisticated and not vulnerable. 2. Proposed Rule 1.8.10 is also inconsistent with the State Bar Act: Section 6106.9 of the California Business & Professions Code tracks with current Rule 3-120, and only provides (in subsection (a)) for the imposition of discipline where an attorney does any of the following (emphasis added): "(1) Expressly or impliedly *condition the performance of legal services for a current or*	2. See response to COPRAC, X-2016-43a, above.

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/ NI[1]	Rule Section or Cmt.	Comment	RRC Response
					prospective client upon the client's willingness to engage in sexual relations with the attorney. (2) *Employ coercion, intimidation, or undue influence* in entering into sexual relations with a client. (3) Continue representation of a client with whom the attorney has sexual relations if the sexual relations *cause the attorney to perform legal services incompetently* in violation of Rule 3-110 of the Rules of Professional Conduct of the State Bar of California, or if the sexual relations would, or would be likely to, damage or prejudice the client's case. 3. Further, as provided in Comment [2], the extension of the proposed rule in this form to all corporate clients – and especially in-house lawyers – is particularly unreasonable and unnecessary. These are not the situations where one would typically find the type of vulnerable clients this rule is intended to protect. Also, because the only exception to the application of the proposed rule is with respect to a consensual sexual relationship that exists	3. The Commission disagrees that a sexual relationship with a client should be equated with or treated the same as a business relationship with a client.

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/ NI[1]	Rule Section or Cmt.	Comment	RRC Response A = 12 NI = 0
					between the lawyer and the client "when the lawyer-client relationship commenced," the proposed rule would prohibit sexual relations between a client and a lawyer if the client and lawyer had been in a previous relationship but were no longer in the relationship at the time the representation commenced. Thus, discipline could be imposed under this strict bright line test if the client and lawyer reengage in sexual relations following a situation where the client seeks out the lawyer for legal advice. The rules regulating business relationships with a client are intended to ensure that the clients are treated fairly and the lawyers' judgment is not impaired. Under our current rule 3-300 (as well as ABA Model Rule 1.8), there is no strict prohibition on a lawyer entering into a business transaction with a client. These rules permit business relations so long as the relationship is fair and consensual (among other requirements). In our view, the rule relating to sexual relations should be similar: provided the relationship is consensual, and	

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					not based on coercion, undue influence or intimidation, and provided the lawyer is otherwise in compliance with the rules (e.g., with respect to competence and conflicts of interest), there should be no total prohibition on sexual relations. PREC believes that the rule should prohibit sexual relations based on coercion, undue influence or intimidation, not merely on just whether an attorney engages in sexual relations with a client with whom he or she was not already involved sexually at the time the representation commenced.	
X-2016-93c	Los Angeles County Public Defender (Brown) (9-23-16)			D	Current Rule 3-120 is nuanced and balanced, with an understanding of the nature of human relations. The proposed rule is a blanket prohibition on all sexual relations unless the consensual sexual relationship existed at the time the lawyer-client relationship commenced. The proposed rule may be easier to enforce, but it is unrealistic in the real world. The current rule correctly recognizes that sex does occur, and the rule prohibits sex that is	See response to the comment from William Johnson, X-2016-2, above.

Proposed Rule 1.8.10 [3-120] Sexual Relations with Client
Synopsis of Public Comments

TOTAL = 17 *A = 8* *D = 6* *M = 3* *NI = 0*

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/ NI[1]	Rule Section or Cmt.	Comment	RRC Response A = 12 NI = 0
					non-consensual, is coerced, is a condition of representation, or results in incompetent representation. The Commission's real complaint is not that lawyers and clients are engaging in sexual relations, it is that the current Rule is too difficult to enforce without proof of harm or misconduct. The *only* evidence the Commission can muster that the current Rule is ineffective in the executive summary is anecdotal. We oppose this revision.	
X-2016-104v	Office of Chief Trial Counsel (OCTC) (Dresser) (9-27-16)	Y	A	Cmt. [3]	1. Supports adoption of proposed Rule 1.8.10. 2. Second sentence of comment [3] should be clearer as to meaning.	1. No response required. 2. The Commission declines to make the suggested change. It believes that the comment adequately and succinctly alerts lawyers to the differences between rule and statute ("This Rule and statute impose different obligations.")
X-2016-120k	LGBT Bar Association of Los Angeles (King) (9-27-16)	Y	A		We support the proposed revisions to this rule.	No response required.