

**Rule 1.8.3 [4-400] Gifts from Client**

- (a) A lawyer shall not:
- (1) solicit a client to make a substantial\* gift, including a testamentary gift, to the lawyer or a person\* related to the lawyer, unless the lawyer or other recipient of the gift is related to the client, or
  - (2) prepare on behalf of a client an instrument giving the lawyer or a person\* related to the lawyer any substantial\* gift, unless (i) the lawyer or other recipient of the gift is related to the client or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code § 21384.
- (b) For purposes of this Rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code § 21374(a).

**Comment**

[1] A lawyer or a person\* related to a lawyer may accept a gift from the lawyer’s client, subject to general standards of fairness and absence of undue influence. A lawyer also does not violate this Rule merely by engaging in conduct that might result in a client making a gift, such as by sending the client a wedding announcement. Discipline is appropriate where impermissible influence occurs. See *Magee v. State Bar* (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839].

[2] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner\* or associate of the lawyer named as executor of the client’s estate or to another potentially lucrative fiduciary position. Such appointments, however, will be subject to Rule 1.7(b).

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[2] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner\* or associate of the lawyer named as executor of the client’s estate or to another potentially lucrative fiduciary position. Such appointments, however, will be subject to Rule 1.7(b).

**Proposed Rule 1.8.3 [4-400] Gifts from Client**  
**Synopsis of Public Comments**

**TOTAL = 3**  
**A = 2**  
**D = 0**  
**M = 1**  
**NI = 0**

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI <sup>1</sup>	Rule Section or Cmt.	Comment	RRC Response
X-2016-ax	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (9-8-16)	Y	M		<p>COPRAC recommends the following changes in the proposed rule:</p> <p>1. COPRAC opposes the substitution of the word “solicit” for “induce.” Although “solicit” is used in other states, the word “induce” encompasses a far wider range of actions that could cause a client to make an inappropriate transfer than “solicit,” which requires a very specific type of action. Retaining the word “induce” would better protect the public.</p> <p>2. COPRAC opposes the elimination of the exception for attorneys to induce family members to make a bequest or gift in paragraph (a)(1). We note that the Model Rule includes a specific exception for family members of the attorney. See Model Rule 1.8(c).</p>	<p>1. The Commission considered the language of the Model Rule and the current California rule, and concluded that “induce” in the current rule is too ambiguous to employ as a disciplinary standard, and that “solicit” created a clearer and more defined standard by which to judge attorney conduct. Therefore, the Commission believes that the “solicit” is preferable to “induce” in the proposed rule.</p> <p>2. The Commission agrees and has made the suggested change.</p>
X-2016-104p	Office of Chief Trial Counsel (OCTC) (Dresser) (9-27-16)	Y	A		Supports adoption of proposed Rule 1.8.3.	No response required.

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

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Synopsis of Public Comments**

**TOTAL = 3**      **A = 2**  
**D = 0**  
**M = 1**  
**NI = 0**

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI <sup>1</sup>	Rule Section or Cmt.	Comment	RRC Response
X-2016-120e	LGBT Bar Association of Los Angeles (King) (9-27-16)	Y	A		Supports adoption of proposed Rule 1.8.3.	No response required.