

Rule 1.8.7 [3-310(D)] Aggregate Settlements

- (a) A lawyer who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.* The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (b) This Rule does not apply to class action settlements subject to court approval.

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The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (b) This Rule does not apply to class action settlements subject to court approval.

**Proposed Rule 1.8.7 [3-310(D)] Aggregate Settlements
Synopsis of Public Comments**

TOTAL = 4	A = 2
	D = 0
	M = 2
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
X-2016-43az	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (09-08-16)	Yes	M		<p>COPRAC generally supports the proposed rule with one suggested change. Rule 1.8.7 replaces what is currently Rule 3-310(D), and is based on Model Rule 1.8.7(g).</p> <p>The proposed rule requires a lawyer to obtain informed consent for any aggregate settlement of claims against two or more clients or an aggregate settlement as to guilty or nolo contendere pleas in a criminal matter. Unlike Model Rule 1.8(g), however, the proposed rule does not specify whether informed consent requires disclosure to the clients of all the claims or pleas involved and how the settlement will affect each of the joint clients.</p> <p>Model Rule 1.8(g) states: “The lawyer’s disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.” In addition, Model Rule 1.8 includes Comment [13], which states that “before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the</p>	The Commission agrees with the commenter and has added the second sentence from Model Rule 1.8(g).

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

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					<p>lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted.”</p> <p>For client protection, COPRAC recommends that the commission include an express disclosure requirement such as set forth above in either the rule or a comment or both. Simply mandating that the lawyer obtain informed consent does not clearly convey to lawyers that they must disclose all of the terms of the proposed settlement. COPRAC does not believe that the commission intends to omit a requirement of full disclosure from the rule, and would not support such a deviation from the Model Rule.</p>	
X-2016-82c	Polish, James (09-26-16)	No	M		Aggregate offers may be made or accepted in a settlement conference or mediation or during a trial. In these and presumably other situations it is not practical to obtain informed written consent before the offer is made or accepted. In such cases it should be permissible to obtain informed consent that is confirmed in writing as soon as is	The Commission did not make the suggested change. It is not convinced that such “after-the-fact” disclosures adequately promote the clients’ right to make an informed decision about accepting the settlement offer. See proposed Rule 1.2.

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					practicable thereafter.	
X-2016-104s	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	A		Supports adoption of proposed Rule 1.8.7.	No response required.
X-2016-120h	LGBT Bar Association of Los Angeles (LGBT Bar of LA) (King) (09-27-16)	Yes	A		Supports adoption of proposed Rule 1.8.7.	No response required.

