

**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.

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

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

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Y-2016-6b	Los Angeles County Bar Association Professional Responsibility and Ethics Committee (Schmid) (12-14-16)	Y	D		<p>1. For the reasons stated in our prior comment letter dated September 21, 2016, we continue to oppose Proposed Rule 1.8.10 in its current revised form.</p> <p>(a) 2. We appreciate the changes introduced to paragraph (a) which seeks to address concerns raised in public comments about the potential invasion of constitutional rights of privacy and freedom of association by applying the rule only to a “current” client “who is not the lawyer’s spouse or registered domestic partner.”</p> <p>(c) 3. We note that new paragraph (c) was added to Proposed Rule 1.8.10 (to the effect that, if the complainant is someone other than the client, the State Bar must consider whether the client would be unduly burdened by a charge against the attorney). If the elements of coercion, intimidation, or undue influence were present in the relationship, then the client could be pressured to resist the filing of charges, thereby impairing disciplinary proceedings and</p>	<p>1. The Commission reasserts its previous responses to the commenter’s points in opposition to the proposed rule.</p> <p>2. No response required.</p> <p>3. The Commission carefully considered these comments and declined to make the suggested changes. The Commission has a basic disagreement with the commenter that the California Constitution requires the commenter’s suggested changes or that considerations of public policy warrant them.</p>

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

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

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

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
					<p>frustrating public protection. Under current rule 3-120, there is no such constraint on investigation and prosecution; the issues presented by third-party complaints are addressed in Business and Professions Code 6106.9(3)(e), which requires that a complaint by any person alleging improper sexual relations between a lawyer and client be verified under oath.</p> <p>While the newly proposed language would narrow the scope of the rule's applicability, it does not cure the constitutional defects that an absolute ban would raise as to the rights of both lawyers and clients. We believe that the rule should retain the language of current rule 3-120, which prohibits 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.</p>	
Y-2016-15	Mills, Robert (01-09-17)	N	D		I am deeply opposed to this proposed Rule. I believe it is unwarranted, demeaning to both attorneys and their clients, and is so overbroad and indiscriminate	The Commission disagrees with the commenter's assessment. In particular, the Commission disagrees that the proposed rule, which has been

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

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

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
					that it is likely to result in all sorts of unintended and inequitable consequences, including among other things, blackmail and extortion.	tailored to address potential constitutional infirmities, is "overbroad and indiscriminate."
Y-2016-21j	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (01-09-17)	Y	M		<p>1. OCTC supports this rule and the Comments.</p> <p>2. The second sentence of Comment 3, however, is unclear as to its meaning because it does not specify what the obligations are.</p>	<p>1. No response required.</p> <p>2. The Commission disagrees that the second sentence is unclear. It provides a cross-reference to the statute, where a lawyer can determine what the obligations are. It is not an appropriate function of a rule comment to describe or explain a statute.</p>

