

[date], 2016

Ms. Audrey Hollins
Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Re: Proposed Rule of Professional Conduct 1.8.10 [3-120]
Sexual Relations With Client

Dear Ms. Hollins:

The Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association (“PREC”) appreciates the opportunity to comment on the draft rules of conduct (the “Proposed Rules”) proposed by the State Bar’s Commission for the Revision of the Rules of Professional Conduct (the “Rules Revision Commission”). Please see our letter dated [date], 2016, describing PREC and praising the efforts of the Rules Revision Commission.

PREC opposes the adoption of Proposed Rule 1.8.10 [Sexual Relations With Client] in its current form. While the proposed 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.

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 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.”

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 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 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.

Thank you again for the opportunity to comment on the Proposed Rules.

Very Truly Yours,