



# The State Bar of California

## **Rule 1.8.7 Aggregate Settlements (Rule Approved by the Supreme Court, Effective November 1, 2018)**

- (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.

**NEW RULE OF PROFESSIONAL CONDUCT 1.8.7  
(Former Rule 3-310 (D))  
Aggregate Settlements**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 3-310(D) (Avoiding the Representation of Adverse Interest) in accordance with the Commission Charter. In addition, the Commission considered the ABA counterpart, Model Rule 1.8(g) (Conflict of Interest Current Clients: Specific Rules). The result of the Commission’s evaluation is proposed rule 1.8.7 (Aggregate Settlements).

**Rule As Issued For 90-day Public Comment**

Proposed rule 1.8.7 retains the substance of current rule 3-310(D) while expanding the public protection of the current rule. Current rule 3-310 (D) prohibits a lawyer who represents two or more clients from entering into an aggregate settlement of the claims of or against the clients without the informed written consent of each client. The current rule does not refer to criminal matters. The Commission believes this omission creates an ambiguity as to the applicability of the rule in criminal matters. To address this concern, the Commission is recommending the addition of the following language: “in a criminal case an aggregate agreement as to guilty or nolo contendere pleas.” The rationale for the expanded language is to ensure that joint clients in criminal, as well as civil matters, are entitled to receive full disclosure from their lawyer and should be empowered to give or decline to give consent to an aggregate settlement.

Lastly, the Discussion section of current rule 3-310 (D) states that the rule “is not intended to apply to class action settlements subject to court approval.” Proposed rule 1.8.7 incorporates this language into the body of the rule.

**Post Public Comment Revisions Following 90-Day Public Comment Period**

After consideration of comments received in response to the initial 90-day public comment period, the Commission added the second sentence from ABA Model Rule 1.8(g) to paragraph (a) to clarify that informed written consent includes disclosure to the clients of all the claims or pleas involved and the participation of each person in the settlement.

With these changes, the Board authorized an additional 45-day public comment period on the revised proposed rule.

**Final Commission Action on the Proposed Rule Following 45-Day Public Comment Period**

After consideration of comments received in response to the additional 45-day public comment period, the Commission made no changes to the proposed rule and voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 1.8.7 at its March 9, 2017 meeting.

**Supreme Court Action (May 10, 2018)**

The Supreme Court approved the rule as submitted by the State Bar to be effective November 1, 2018.

Rule ~~1.8.7-3-310(D)~~ **Avoiding the Representation of Adverse Interests** Aggregate Settlements

(Redline Comparison to the California Rule Operative Until October 31, 2018)

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~~(D)~~(a) A ~~member~~lawyer who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients ~~without the, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives~~ informed written consent ~~of each client.\*~~ 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.

**Discussion**

~~Paragraph (D) is~~(b) This rule does not ~~intended to~~ apply to class action settlements subject to court approval.