



The State Bar of California

Rule 5.6 Restrictions on a Lawyer's Right to Practice (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) Unless authorized by law, a lawyer shall not participate in offering or making:
 - (1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or
 - (2) an agreement that imposes a restriction on a lawyer's right to practice in connection with a settlement of a client controversy, or otherwise.
- (b) A lawyer shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.
- (c) This rule does not prohibit an agreement that is authorized by Business and Professions Code sections 6092.5, subdivision (i) or 6093.

Comment

[1] Concerning the application of paragraph (a)(1), see Business and Professions Code section 16602; *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80].

[2] Paragraph (a)(2) prohibits a lawyer from offering or agreeing not to represent other persons* in connection with settling a claim on behalf of a client.

[3] This rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to rule 1.17.

**NEW RULE OF PROFESSIONAL CONDUCT 5.6
(Former Rule 1-500)
Restrictions on a Lawyer's Right to Practice**

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct ("Commission") evaluated current rule 1-500 (Agreements Restricting a Member's Practice) in accordance with the Commission Charter. In addition, the Commission considered the national standard of ABA Model Rule 5.6 (Restrictions On Right To Practice). The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The result of the Commission's evaluation is proposed rule 5.6 (Restrictions on a Lawyer's Right to Practice).

Rule As Issued For 90-day Public Comment

The main issue considered was whether to add an express exception that would permit a restrictive partnership, or similar, agreement which is "authorized by law" in order to address the wide range of restrictive arrangements that a law firm might employ which do not constitute a violation of the current rule (see *Howard v. Babcock* (1993) 6 Cal.4th 409, 425). The Commission voted to recommend adoption of this exception. Furthermore, the Commission recommends adoption of the rule structure of Model Rule 5.6 to eliminate unnecessary differences with the national standard of Model Rule 5.6 and to facilitate compliance in the case of partnership agreements among multijurisdictional law firms.

Paragraph (a) restricts a lawyer from participating in offering or making: (1) a restrictive law firm partnership, or similar, agreement; and (2) a restrictive agreement as part of a settlement of a client's case or matter. Paragraph (a) continues the concept of the existing exception for agreements that concern benefits upon retirement (current rule 1-500(A)(1)). The paragraph also adds the exception described above that permits agreements authorized by law.

Paragraph (b) continues the existing prohibition against a lawyer participating in, offering or making an agreement which precludes the reporting of a violation of the rules. Although this concept is not in Model Rule 5.6, the Commission recommends that it be carried forward because it provides important public protection.

Paragraph (c) provides that the rule does not prohibit agreements that impose restrictions on practice as part of disciplinary proceedings. This continues paragraph (A)(3) of current rule 1-500.

Comment [1] cites to Business and Professions Code § 16602 and *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80] concerning the application of the wide range of restrictive arrangements that law firms might employ.

Comment [2] explains how paragraph (a)(2) is applied, emphasizing that the terms of a settlement agreement cannot require that a lawyer refrain from representing other clients. This continues the guidance in the first Discussion paragraph in rule 1-500.

Comment [3] clarifies that the rule does not prohibit restrictions of the sale of a law practice, where agreements to sell a law practice will likely include a clause that restricts the selling lawyer's ability to continue practice and compete with the practice after it is sold.

Post-Public Comment Revisions

After consideration of comments received in response to the initial 90-day public comment period, the Commission did not revise the proposed rule.

Proposed Rule as Amended by the Board of Trustees on November 17, 2016

After public comment, the Commission's proposed rule was considered by the Board of Trustees at its meeting on November 17, 2016. To continue the broad scope of current rule 1-500, the Board revised the proposed rule to provide that a lawyer shall not participate in offering or making an agreement that imposes a restriction on a lawyer's right to practice even if that agreement is not a partnership, shareholders, operating, employment, or other similar type of agreement and even if the agreement is not connected with a settlement of a client controversy.

The Board also revised the rule to make the prohibition on restrictive agreements subject to a general "authorized by law" exception. With these changes, the Board voted to authorize an additional 45-day public comment period on the proposed rule.

The redline strikeout text below shows the changes made by the Board:

- (a) AUnless authorized by law, a lawyer shall not participate in offering or making:
- (1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement that ~~:(i)~~ concerns benefits upon retirement, or ~~(ii) is authorized by law; or~~
 - (2) an agreement that imposes a restriction on a lawyer's right to practice in connection with a settlement of a client controversy, or otherwise~~in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.~~

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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

No comments were received in response to the additional 45-day public comment. 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 5.6 at its March 9, 2017 meeting.

Supreme Court Action (May 10, 2018)

The Supreme Court approved the rule as modified by the Court to be effective November 1, 2018. At the end of subparagraph (a)(1), a semicolon was substituted for a comma.

**Rule ~~1-500~~ ~~Agreements Restricting a Member's~~ 5.6 Restrictions on a Lawyer's
Right to Practice**

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

(a) Unless authorized by law, a lawyer shall not participate in offering or making:

~~(A) A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of a member to practice law, except that this rule shall not prohibit such an agreement which:~~

~~(1) Is a part of an employment~~partnership, ~~shareholders', or partnership agreement among members provided the restrictive agreement does not survive the,~~ operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the ~~employment, shareholder, or partnership~~ relationship, except an agreement that concerns benefits upon retirement; or

~~(2) Requires payments to a member upon the member's retirement from the practice of law; or~~ an agreement that imposes a restriction on a lawyer's right to practice in connection with a settlement of a client controversy, or otherwise.

~~(3) Is authorized by Business and Professions Code sections 6092.5 subdivision (i), or 6093.~~

~~(Bb) A member~~lawyer shall not ~~be a party to or~~ participate in offering or making an agreement which precludes the reporting of a violation of these rules.

(c) This rule does not prohibit an agreement that is authorized by Business and Professions Code sections 6092.5, subdivision (i) or 6093.

Discussion Comment

~~Paragraph (A) makes it clear that the practice, in connection with settlement agreements, of proposing that a member refrain from representing other clients in similar litigation, is prohibited. Neither counsel may demand or suggest such provisions nor may opposing counsel accede or agree to such provisions.~~

~~Paragraph (A) permits a restrictive covenant in a law corporation, partnership, or employment agreement. The law corporation shareholder, partner, or associate may agree not to have a separate practice during the existence of the relationship; however, upon termination of the relationship (whether voluntary or involuntary), the member is free to practice law without any contractual restriction except in the case of retirement from the active practice of law.~~

[1] Concerning the application of paragraph (a)(1), see Business and Professions Code section 16602; *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80].

[2] Paragraph (a)(2) prohibits a lawyer from offering or agreeing not to represent other persons* in connection with settling a claim on behalf of a client.

[3] This rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to rule 1.17.