

DRAFTING TEAM REPORT AND RECOMMENDATION: RULE 1-110

Lead Drafter: Dan Eaton
Co-Drafters: James Ham, Mark Tuft
Meeting Date: May 29, 2015

I. CURRENT CALIFORNIA RULE

Rule 1-110 Disciplinary Authority of the State Bar

A member shall comply with conditions attached to public or private reprovls or other discipline administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 9.19, California Rules of Court.

Discussion:

None.

II. DRAFTING TEAM'S RECOMMENDATION AND VOTE

There was consensus among the drafting team members to recommend a proposed amended rule as set forth below.

III. PROPOSED RULE (CLEAN)

Rule 1-110 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline

A lawyer shall comply with the terms and conditions attached to public or private reprovls and any agreement in lieu of discipline administered by the State Bar pursuant to Business and Professions Code §§ 6077 and 6078 and rule 9.19, California Rules of Court.

Discussion:

Other provisions also require a lawyer to comply with conditions of discipline. See e.g., Business and Professions Code § 6068, subdivisions (k) and (l).

IV. PROPOSED RULE (REDLINE TO CURRENT CALIFORNIA RULE 1-110)

Rule 1-110 ~~Disciplinary Authority of the State Bar~~ Compliance with Conditions of Discipline and Agreements in Lieu of Discipline

A ~~member~~ lawyer shall comply with the terms and conditions attached to public or private reprovls ~~or other discipline~~ and any agreement in lieu of discipline administered by the State Bar pursuant to Business and Professions Code ~~sections~~ §§ 6077 and 6078 and rule 9.19, California Rules of Court.

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Discussion:

[Other provisions also require a lawyer to comply with conditions of discipline. See e.g., Business and Professions Code § 6068, subdivisions \(k\) and \(l\).](#)

V. PUBLIC COMMENTS SUMMARY

None received.

VI. OCTC / STATE BAR COURT COMMENTS

- Jayne Kim, OCTC, April 20, 2015: 1. OCTC recommends adding the words “all terms” to this rule such that the rule reads: “A member shall comply with all terms and conditions attached to public or private reprovls. . .” (Footnote: OCTC notes that Business and Professions Code sections 6068(k) and rule 9.19 of the Rules of Court reference only conditions.) 2. The rule should also include a reference to agreements in lieu of discipline.

These revisions would extinguish any ambiguity as to a member’s duties and emphasize the importance of strict compliance with disciplinary orders and agreements.

VII. COMPARISON OF PROPOSED RULE TO APPROACHES IN OTHER JURISDICTIONS (NATIONAL BACKDROP)

The below is taken verbatim from an analysis prepared by State Bar staff with the exception of an omitted, inapplicable parenthetical comment at the end of the analysis:

There is no corresponding ABA Model Rule of Professional Conduct, nor has any jurisdiction adopted a rule of professional conduct similar to rule 1-110. However, there is a comparable rule 10(B) in the ABA Model Rules of Disciplinary Enforcement¹ that provides: “Written conditions may be attached to an admonition or a reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent.” Current Rule 1-110 is similar in concept to the ABA disciplinary enforcement rule but it is tailored to California’s lawyer disciplinary system. Professional Competence staff believes that the existence of these similar concepts achieves appropriate uniformity and promotes a national standard. This is because the subject matter of this particular professional conduct rule is one which is tied to a jurisdiction’s specific system of discipline.

¹ The following states appear to have discipline enforcement rules based, in whole or in part, on the ABA Model Rules of Disciplinary Enforcement: Alabama, Alaska, Delaware, Florida, Idaho, Louisiana, Michigan, Mississippi, Montana, Nevada, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, and West Virginia. In addition, Maine recently proposed a similar rule.

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VIII. CONCEPTS ACCEPTED/REJECTED; CHANGES IN DUTIES; NON-SUBSTANTIVE CHANGES; ALTERNATIVES CONSIDERED

Concepts Accepted (Pros and Cons):

- Changing Title of the Current Rule
 - Pros: Conforms the title to the substance of the rule.
 - Cons: None identified
- Change “Member” to “Lawyer”
 - Pros: The Rules of Professional Conduct apply to all lawyers authorized to practice in California, including out-of-state lawyers admitted *pro hac vice*. The application of the rules is not limited to members of the California State Bar.
 - Cons: None identified.

Concepts Rejected (Pros and Cons):

None of any significance, except to the extent noted in the Open Issues section below.]

IX. OPEN ISSUES/CONCEPTS FOR THE COMMISSION TO CONSIDER

The drafting team did not reach consensus on whether rule 1-110 should be amended to add a reference to “disciplinary probation.” If so amended, the rule would provide: “A lawyer shall comply with the terms and conditions attached to public or private reprovalls, disciplinary probation, and any agreement in lieu of discipline administered by the State Bar pursuant to Business and Professions Code section 6077 and 6078 and rule 9.19, California Rules of Court.” (Emphasis added). Current rule 1-110 does not expressly refer to “disciplinary probation” but does include the phrase “other discipline administered by the State Bar,” a phrase omitted in the drafting team’s proposed rule.

Arguments in favor of this change include: Adding the term “disciplinary probation” is consistent with the duty of an attorney under Business and Professions Code section 6068(k) providing that an attorney must “comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.” Including “disciplinary probation” in an amended rule 1-110 should improve public protection by increasing awareness of this duty and by promoting compliance through deterrence because any condition imposed as part of probation would likely include a warning to the lawyer that failure to comply with the condition would subject the lawyer to a rule 1-110 violation. Notwithstanding the current rule’s reference to “other discipline,” the current rule arguably is deficient to the extent that the significance of conditions arising in the context of “probation” is not specifically identified.

Arguments against this change include: Including “disciplinary probation” in an amended Rule 1-110 will encourage unnecessary and inefficient double charging of the same misconduct (i.e., a count for violation of Rule 1-110 and a count for violation Section 6068(k)) without any effect on the degree of discipline or the outcome of the matter. Unnecessary duplicative charging needlessly increases the cost of the discipline system with no corresponding measurable

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benefit. “Disciplinary probation” is neither a category nor type of discipline. Adding that term risks possible confusion in a rule that has been historically non-controversial. Public protection and increased awareness of the rules is not enhanced by unnecessary repetition or by the inclusion of terms that do not correctly describe the discipline process and its terms and conditions. Probation is regularly required as a condition of formal discipline, such as a public reproof or actual suspension. Probation can also be a condition of an agreement in lieu of discipline. As recommended by the drafting team, the proposed rule would cover both reproofs and agreements in lieu of discipline. The addition of “disciplinary probation” is unnecessary, imports confusing terminology that is not used in State Bar court proceedings, and would not as a practical matter increase public protection.

X. COMMENTS FROM DRAFTING TEAM MEMBERS OR OTHER COMMISSION MEMBERS

Kehr (5/19/15):

- 1) The word “lieu” should be capitalized in the title.
- 2) The Style Guide for Rules of the State Bar at p. 28 recommends the use of the section symbol rather than the word “section”. Comment

XI. RECOMMENDATION AND PROPOSED COMMISSION RESOLUTION

Recommendation:

Adopt proposed amended rule 1-110.

Proposed Resolution:

RESOLVED: That the Commission adopts proposed amended rule 1-110 as set forth in this report.

XII. DISSENTING POSITION(S)

None.

XIII. FINAL COMMISSION VOTE/ACTION

[Date of Vote]

[Action: Proposed amended rule adopted or not adopted]

[Record of Roll Call Vote]