

**RULE 6.2:  
ACCEPTING APPOINTMENTS**

**Executive Summary**

Proposed Rule 6.2 ("Accepting Appointments") provides that a lawyer may not seek to avoid appointment by a tribunal to represent a person, except for "good cause."

**Text of Proposed Rule with COSAC Commentary**

<b>RULE 6.2 ACCEPTING APPOINTMENTS</b>	<b>COSAC COMMENTARY</b>
<p>A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause.</p>	<p>New York does not currently have a disciplinary rule concerning avoiding appointment by a tribunal to represent a person. This issue is addressed in EC 2-29 which states that a lawyer should not seek to be excused from undertaking a court appointed representation "except for compelling reasons" and in EC 2-30, which discusses the circumstances in which it is appropriate for a lawyer to decline an engagement generally.</p> <p>The Proposed Rule differs from the ABA version because it omits the examples of good cause that appear in the text of the Model Rule. Because good cause will ultimately be determined by the tribunal seeking to appoint the lawyer, COSAC concluded that examples of what constitutes, may constitute or does not constitute good cause were more appropriately addressed in the Comment to the Rule, rather than in the rule text.</p>

**COMMENT**

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

**Appointed Counsel**

[2] For good cause, a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if undertaking the representation would result in a violation of the Rules of Professional Conduct or other law. For example, if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest because of the lawyer's representation of a current client, see Rule 1.7, a former client, see Rule 1.9, or because of a disqualification imputed to the lawyer, see Rule 1.10, or because the representation would result in an improper conflict of interest because of the lawyer's personal interests, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client lawyer relationship or the lawyer's ability to represent the client, see Rule 1.7. Absent such a material limitation on the representation or other violation of the Rules of Professional Conduct or other law, good cause does not exist solely because of the repugnance of the subject matter of the proceeding, community attitude, the identity or position of the person involved in the case, the belief of a lawyer that a defendant in a criminal proceeding is guilty or the belief of the lawyer regarding the merits of the civil case.

**COSAC COMMENTARY**

Comment [1] is unchanged from the ABA version.

Comment [2] is based on the ABA version but has been revised to reflect the absence of examples of "good cause" in the text of the Proposed Rule. It has also been reorganized so that Comment [2] addresses on circumstances where good cause exists because undertaking the representation *would* result in a violation of the Rules of Professional Conduct or other law. A final sentence has been added that does not appear in the ABA version of Comment [2]. This sentence, which is substantially based on EC-29 and EC-30, gives examples of factors that would not constitute good cause.

<p>[2A] Good cause to decline an appointment may also include circumstances where acceptance would create a personal hardship on the lawyer or be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.</p>	<p>Examples of circumstances where good cause <i>may</i> exist, i.e., those not based on a violation of the Rules or other law, are addressed in Comment [2A].</p>
<p>[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality and is subject to the same limitations on the client lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.</p>	<p>Comment [3] is unchanged from the ABA version.</p>

### **Changes from Existing New York Code**

New York does not currently address this issue in a disciplinary rule. This issue is addressed, however, in EC 2-29, which states that a lawyer should not seek to be excused from undertaking a court appointed representation “except for compelling reasons” and in EC 2-30, which discusses the circumstances in which it is appropriate for a lawyer to decline an engagement generally. The Proposed Rule substitutes “good cause” for compelling reasons.

### **Reporter’s Note**

Proposed Rule 6.2 accepts neither the language of ABA Model Rule 6.2 nor EC-29 in full. It differs substantially from the model rule because it omits examples of “good cause” for declining such an appointment from the rule text, and reserves discussion of what constitutes, may constitute and does not constitute good cause for the Comment to the Rule. And unlike EC-29, it states that a lawyer need only have “good” rather than compelling reasons to seek to avoid appointment.

### **Corresponding New York Disciplinary Rules**

There are no analogues for this Rule in the current New York Code.