

**RULE 6.3:
MEMBERSHIP IN A LEGAL SERVICES ORGANIZATION**

Executive Summary

Proposed Rule 6.3 ("Membership in a Legal Services Organization") authorizes lawyers to serve as officers or members of a not-for-profit legal services organization without exposing them to conflicts of interest that might otherwise disqualify them or their law firm from representing clients in the normal course of their practice. In 1999, New York adopted the equivalent of ABA Rule 6.3 as DR 5-110.

Text of Proposed Rule with COSAC Explanation

RULE 6.3: MEMBERSHIP IN LEGAL SERVICES ORGANIZATION	COSAC COMMENTARY
<p>A lawyer may serve as a director, officer or member of a not-for-profit legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:</p> <p>(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or</p> <p>(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.</p>	<p>COSAC recommends adoption of ABA Rule 6.3 as Proposed New York Rule 6.3. Proposed Rule 6.3's counterpart in the New York Code is DR 5-110, which was added to the Code in 1999. The Proposed Rule differs from the ABA rule because it retains the modifier "not-for profit" included in DR 5-110. It differs from DR 5-110 because it substitutes a reference to "the lawyer's obligations to a client under Rule 1.7" for the reference in DR 5-110 to "the lawyer's duty of loyalty to a client under DR 5-101 through DR 5-110."</p>

COMMENT	COSAC COMMENTARY
<p>[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.</p> <p>[1A] This Rule applies to legal services organizations organized and operating on a not-for-profit basis.</p> <p>[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.</p>	<p>Proposed Comment [1] is unchanged from the ABA version of Comment [1].</p> <p>Proposed Comment [1A] has been added to clarify that this rule applies only to not-for-profit legal services organizations.</p> <p>Proposed Comment [2] is unchanged from ABA Comment [2].</p>

Changes from Existing New York Code

Proposed Rule 6.3 is substantively the same as DR 5-110.

Reporter's Notes

Proposed Rule 6.3 distinguishes between the staff lawyers of a legal services organization, who, for purposes of the conflict of interest rules, actually represent legal services clients and lawyers serving as board members or officers who do not. COSAC aimed in Proposed Rule 6.3 to promote lawyer participation in pro bono organizations that serve indigent clients by assuring

that a lawyer's management role in such an organization is not to be used as ammunition to disqualify a lawyer from representing clients in the lawyer's practice.

Corresponding New York Disciplinary Rules

DR 5-110 Membership in Legal Service Organization

A. A lawyer may serve as a director, officer or member of a not-for-profit legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests that differ from those of a client of the lawyer or the lawyer's firm, provided that the lawyer shall not knowingly participate in a decision or action of the organization:

1. If participating in the decision or action would be incompatible with the lawyer's duty of loyalty to a client under DR 5-101 through DR 5-111; or

2. Where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests differ from those of a client of the lawyer or the lawyer's firm.