

RULE 6.4
LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

Executive Summary

Proposed Rule 6.4 (“Law Reform Activities Affecting Client Interests”) authorizes a lawyer to serve as a member or officer of a law reform organization, notwithstanding the effect the reform may have on the interests of the lawyer’s clients. The Proposed Rule makes clear that serving on the board of such an organization is not tantamount to representing it and, therefore, does not expose lawyers who serve on such boards to disqualification motions in the course of their regular practice.

Text of Proposed Rule with COSAC Explanation

RULE 6.4: LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS	COSAC COMMENTARY
<p>A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially affected by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.</p>	<p>Proposed New York Rule 6.4 is identical to the ABA Model Rule, except that it broadens the circumstance in which disclosure by the lawyer is required from those where a client’s interests may be “materially benefited” (as in the ABA version) to those in which a client’s interest may be “materially affected” (as currently provided in EC 8-4).</p>

COMMENT

[1] Lawyers involved in organizations seeking law reform generally do not have a client lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients. A lawyer's identification with the organization's aims and purposes may under some circumstances give rise to a personal interest conflict with client interests implicating the lawyer's obligations under other Rules, particularly Rule 1.7. A lawyer is also professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially affected.

COSAC COMMENTARY

The proposed Comment to Rule 6.4 is identical to the ABA version, except that (1) a sentence has been added highlighting the idea expressed less explicitly in the ABA version that in some circumstances a lawyer's identification with the organization's aims and purposes may give rise to a personal interest conflict implicating the lawyer's obligations to clients under other Rules, particularly Rule 1.7; and (2) in the final sentence the word "affected" has been substituted for the word "benefited."

Changes from Existing New York Code

New York does not have a disciplinary rule governing participation by lawyers in law reform organizations; the substance of Rule 6.4 and its Comment currently appear in EC 8-4.

Reporter's Notes

Proposed Rule 6.4 serves the important social policy goal of encouraging lawyers to participate in activities that improve the law, the legal system and/or the legal profession. As such, Proposed Rule 6.4 is a companion to Rule 6.3 concerning a lawyer's membership in a legal services organization. In contrast to Rule 6.3, however, which bars a lawyer from participating in a decision or action of the legal services organization that is incompatible with the lawyer's obligations to a client under Rule 1.7, or that materially adversely affects a client of the organization whose interests are adverse to a client of the lawyer; the Proposed Rule requires only that a lawyer "disclose the fact" that the interests of a client (who need not be identified) may be "materially affected" by a decision in which the lawyer participates.

Proposed Rule 6.4 and its ABA counterpart differ in that the Proposed Rule, like EC 8-4, requires a lawyer to disclose when a client's interests are "materially affected." The ABA Model Rule limits the disclosure requirement to circumstances in which a client may be "materially benefitted" by the action of the organization in which the lawyer participates.

Corresponding New York Disciplinary Rules

There is no analogue to the Proposed Rule in New York's disciplinary rules.