

TOTAL = 3 Agree = 2
Disagree =
Modify = 1
NI =

Rule 6.4 Law Reform Activities Affecting Client Interests.
[Sorted by Commenter]

No.	Commentator	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	COPRAC	A	Yes		Support as drafted.	No response required.
2	San Diego County Bar Association Legal Ethics Committee	M	Yes		<p>It is foreseeable that a lawyer involved in law reform will not always be able to disclose that a client's interests may be materially benefitted or adversely affected without disclosing client confidences. The fact that a client need not be identified does not solve the problem. Hiding the client's identity does not permit the lawyer to reveal the client's confidences. For instance, a lawyer's record of representing certain clients may be enough in some instances for others to correctly infer the client whose interests would be materially benefitted or adversely affected.</p> <p>In such instances when the lawyer could not make the disclosure required by Proposed Rule 6.4 without disclosing client confidences, an option must be permitted. Proposed Rule 6.4 should explicitly provide that option, either in the text of the rule or in a comment, by stating that, if disclosure is not permitted by the lawyer's obligations to clients under other Rules and statutes, the lawyer should instead recuse himself or herself from participating in</p>	The Commenter's concerns are all addressed by the deletion of the second sentence of the originally proposed Rule and the deletion of most of the originally proposed Comment.

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

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					<p>the decision that may materially benefit or adversely affect the client.</p> <p>Have the last two sentences of Rule 6.4 read: "When the lawyer knows that the interests of a client may be materially benefitted or adversely affected by a decision in which the lawyer participates, the lawyer shall disclose that fact, <u>if not prohibited by the lawyer's obligations to clients under other Rules and statutes</u>, but need not identify the client. <u>If disclosure is prohibited, the lawyer shall not participate in any decision that may materially benefit or adversely affect the interests of his or her client.</u>"</p> <p>In the alternative, Proposed Rule 6.4 could remain worded as currently proposed but be accompanied by a second Comment worded as follows:</p> <p>"If disclosure is prohibited by the lawyer's obligations to any client under other Rules or statutes, then a lawyer cannot provide the disclosure the disclosure required. If disclosure is prohibited, or if the lawyer chooses not to disclose in accordance with Rule 6.4 for any other reason, the lawyer shall not participate in any decision that the lawyer knows may materially benefit or adversely</p>	

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					<p>affect the interests of a client.”</p> <p>Concerned about the impact the rule will have on members who participate in organizations such as the California Conference of delegates. The addition of another Comment to address this issue is encouraged. It is hard to imagine that the drafters intended all the delegates to make such disclosures to the Conference but including “members” within the ambit of the proposed, rather than limiting it to officers and directors of the Conference leads to a questionable outcome.</p>	
3	Office of Chief Trial Counsel	A	Yes		OCTC supports encouraging law reform activities but is concerned that there is no requirement to advise the lawyer’s clients when the reform may affect the interests of the clients.	Law reform activities would likely only indirectly affect a client thus not requiring advising clients of such indirectly adverse effects.

Rule 6.4 Law Reform Activities Affecting Client Interests
(Commission's Proposed Rule – Clean Version)

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.

COMMENT

- [1] Lawyers involved in organizations seeking law reform generally do not have a lawyer-client 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).