

Rule 6.3 Membership In Legal Services Organization
(Commission's Proposed Rule Adopted on November 13 – 14, 2015 – Clean Version)

A lawyer may serve as a director, officer or member of a 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:

- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rules 1.7 or 1.9, or Business and Professions Code § 6068(e)(1); or
- (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.

Comment

Lawyers should 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.

**PROPOSED RULE OF PROFESSIONAL CONDUCT 6.3
(No Current Rule)
Membership in Legal Services Organization**

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) has reviewed and evaluated American Bar Association (“ABA”) Model Rule 6.3 (Membership in Legal Services Organization) for which there is no California counterpart. The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rule. The evaluation was made with a focus on the function of the rules as disciplinary standards, and with the understanding that the rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. The result of this evaluation is proposed rule 6.3 (Membership in Legal Services Organization). This proposed rule has been adopted by the Commission for submission to the Board of Trustees for public comment authorization. A final recommended rule will follow the public comment process.

Proposed rule 6.3 is derived from ABA Model Rule 6.3. The proposed rule addresses a lawyer serving as an officer or member in a legal services organization while continuing to practice law in another capacity. The proposed rule’s aim is to provide assurance to lawyers that they will not disqualify themselves or their firm from participating as officers or members of a legal services organization. Such service is important and should be encouraged as long as it does not interfere with the lawyer’s duties to his or her clients.

Proposed rule 6.3 provides that a lawyer may serve as an officer or member of a legal services organization even where the organization serves persons whose interests are adverse to the lawyer’s clients. However, the lawyer is barred from participating in a decision or action of the legal services organization in the following situations.

First, paragraph (a) prohibits such participation if it would be incompatible with certain enumerated duties owed to the lawyer’s clients, including the duty of confidentiality. While ABA Model Rule 6.3 does not include a reference to confidentiality, California has a tradition of heightened client protection in this area.

Second, paragraph (b) prohibits a lawyer from participating in a decision or action of a legal services organization where it would have an adverse effect on the organization’s client whose interests are adverse to those of the lawyer’s client.

The comment provides that a lawyer participating as an officer or member of a legal services organization does not have a lawyer-client relationship with the persons served by the organization. The comment explains the policy underlying the proposed rule, namely, that without such a rule, the profession’s involvement in legal services organizations would be severely curtailed.

National Background – Adoption of Model Rule 6.3

As California does not presently have a direct counterpart to Model Rule 6.3, this section reports on the adoption of the Model Rule in United States’ jurisdictions. The ABA Comparison Chart,

entitled “Variations of the ABA Model Rules of Professional Conduct, Rule 6.3: Membership in Legal Services Organizations,” revised May 4, 2015, is available at:

http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_6_3.pdf

Thirty-eight jurisdictions have adopted Model Rule 6.3 verbatim.¹ Seven states have adopted a slightly modified version of Model Rule 6.3.² Two states have adopted a version of the rule that is substantially different from Model Rule 6.3.³ Four states have not adopted any version of Model Rule 6.3.⁴

¹ The thirty-eight jurisdictions are: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

² The seven states are: Florida, Georgia, Illinois, Kansas, Maryland, New York, and Tennessee.

³ The two states are: Michigan and New Jersey.

⁴ The four states are: California, Kentucky, Ohio, and Texas.

**Rule 6.3 Membership In Legal Services Organization
(Redline Comparison of the Proposed Rule to ABA Model Rule)**

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- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under ~~Rule~~Rules 1.7 or 1.9, or Business and Professions Code § 6068(e)(1); or
- (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.

Comment

~~[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.

~~[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.~~