



The State Bar of California

Rule 6.3 Membership in Legal Services Organization (Rule Approved by the Supreme Court, Effective November 1, 2018)

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 Business and Professions Code section 6068, subdivision (e)(1) or rules 1.6(a), 1.7, 1.9, or 1.18; 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 lawyer-client 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.

**NEW RULE OF PROFESSIONAL CONDUCT 6.3
(No Former Rule)
Membership in Legal Services Organization**

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) reviewed and evaluated 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 result of this evaluation is proposed rule 6.3 (Membership in Legal Services Organization).

Rule As Issued For 90-day Public Comment

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 by participating as officers or members of a legal services organization. Such service is important and should be encouraged so 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.

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.

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 lone 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. Seven jurisdictions have adopted a slightly modified version of Model Rule 6.3. Two jurisdictions have adopted a version of the rule that is substantially different from Model Rule 6.3. Four jurisdictions, including California, have not adopted any version of Model Rule 6.3.

Post-Public Comment Revisions

After consideration of comments received in response to the initial 90-day public comment period, the Commission made non-substantive stylistic edits and voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 6.3 at its November 17, 2016 meeting.

Supreme Court Action (May 10, 2018)

The Supreme Court approved the rule as modified by the Court to be effective November 1, 2018. A stylistic change was made in the rule title. In paragraph (a), references to rules 1.6(a) and 1.18 were added.

Supreme Court Action (September 26, 2018)

Subsequently, the Board adopted staff recommended “clean-up” revisions to various rules, including this rule. All of these changes were non-substantive and, for example, implemented copy editing corrections to style and punctuation. The Supreme Court approved the “clean-up” revisions operative November 1, 2018 by order dated September 26, 2018.

Rule 6.3 Membership in Legal Services Organization (Redline Comparison to the 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 Business and Professions Code section 6068, subdivision \(e\)\(1\) or rules 1.6\(a\), 1.7, 1.9, or 1.18](#); 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-client~~ 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.~~