

Rule 6.4: Law Reform Activities Affecting Client Interests

1. Current Kentucky Rule with Official Comments:

SCR 3.130(6.4) Law reform activities affecting client interests

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 disqualify himself from the matter.

Supreme Court Commentary

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 under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program when the lawyer knows a private client might be materially affected.

2. Proposed Kentucky Rule with Official Comments:

SCR 3.130(6.4) Law reform activities affecting client interests

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 disqualify himself from the matter~~ the lawyer shall disclose that fact but need not identify the client.

~~Supreme Court Commentary~~ 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 under other Rules, particularly Rule 1.7. A lawyer is 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.

3. Discussion and Explanation of Recommendation:

a. Comparison of proposed Kentucky Rule with its counterpart ABA Model Rule.

(1) The Committee recommends adoption of MR 6.4 with the minor change in the MR and Comment of deleting the word “benefited” and replacing it with “affected” as used in the current KRPC 6.4.

(2) This recommendation also has the effect of changing the current Kentucky Rule by deleting “disqualify himself from the matter” and replacing it with “disclose that fact but need not identify the client”. The Committee concluded that automatic disqualification was not necessary in every case as is required in the current KRPC 6.4 and could result in well qualified lawyers being excluded from performing beneficial public service. Under the proposed Rule disqualification will be determined on a case-by-case basis.

b. Detailed discussion of reason for variance from ABA Model Rule (if any).

There is no variance in proposed KRPC 6.4 from MR 6.4 except for two minor edits.

Committee proposal adopted without change. Order 2009-05, eff 7-15-09.