

**AMERICAN BAR ASSOCIATION**

**TASK FORCE ON CORPORATE RESPONSIBILITY**

**SECTION OF BUSINESS LAW**

**SECTION OF TAXATION**

**SECTION OF TORT TRIAL AND INSURANCE PRACTICE**

**STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY**

**YOUNG LAWYERS DIVISION**

**SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW**

**TASK FORCE ON IMPLEMENTATION OF SECTION 307 OF**

**SARBANES-OXLEY ACT OF 2002**

**LAW PRACTICE MANAGEMENT SECTION**

**SECTION OF FAMILY LAW**

**PROPOSED AMENDMENTS TO RULE 1.13 OF THE  
ABA MODEL RULES OF PROFESSIONAL CONDUCT**

**EXECUTIVE SUMMARY**

*Summary of Recommendation*

The ABA Task Force on Corporate Responsibility recommends that Rule 1.13 of the ABA Model Rules of Professional Conduct (the “Model Rules”) be amended in order to sharpen the bedrock principle of the Model Rule that a lawyer for an organizational client represents the organization and must act in the best interest of the organization. The amendments being recommended are as follows:

- Where the lawyer knows of facts from which a reasonable lawyer, under the circumstances, would conclude that an officer’s conduct involves a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization, and that violation is likely to result in substantial injury to the organization, then the lawyer must proceed as is reasonably necessary in the best interest of the organization.
- The lawyer would be required in those circumstances to refer the matter to higher authority in the organization, unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so.
- Where the organization’s highest authority fails or refuses to act with respect to a clear violation of law, and the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, the lawyer may reveal information relating to the representation, but only if and to the extent necessary to prevent substantial injury to the organization. The permissive right to reveal information does not apply to a lawyer engaged by the organization to

investigate an alleged violation of law, or to defend the organization or an officer against a claim arising from an alleged violation of law.

- A lawyer who reasonably believes that he or she has been discharged because of action taken pursuant to Rule 1.13, or who withdraws in circumstances that require or permit such action, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

*Summary of the Issues that the Recommendation Addresses; Explanation of the Proposed Policy Position*

Model Rule 1.13 currently requires the lawyer for an organizational client to take appropriate action in the best interest of the client. The Task Force believes that the Model Rules should provide more guidance with respect to the lawyer's obligations to act in the best interest of the organization.

The Task Force recommends first that the trigger for requiring action by the lawyer be clarified to require action by the lawyer where a reasonable lawyer, who knows the facts actually known by the lawyer, would, in similar circumstances, conclude that the conduct in which an officer is engaging or intends to engage constitutes a violation of law or duty to the organization that is likely to result in substantial injury to the organization. The recommendation recognizes that there is a range of reasonable conduct for a lawyer facing these circumstances, and that a lawyer satisfies the Model Rule by acting within that range. The Task Force recommends that Rule 1.13 require that the lawyer refer the matter to higher authority in the organization – including, if warranted, to the organization's highest authority -- unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so.

The Task Force's recommended amendments to Model Rule 1.13 also address circumstances where the organization's highest authority refuses to or fails to protect the organization against substantial injury arising from a clear violation of law. In such a circumstance, the Task Force believes the policy interest of protecting the organizational client from substantial injury outweighs the organization's general interest in protecting confidentiality of information communicated by an officer. Under these narrow and extraordinary circumstances, the Task Force believes that the lawyer may reveal information relating to the representation but only to the extent reasonably believed to be necessary to prevent substantial injury to the organization that is reasonably certain to occur.

In addition, the Task Force has identified two circumstances in which a lawyer for an organizational client should not be permitted to reveal information relating to a representation, even where the highest authority fails or refuses to act: first, where the lawyer has been engaged by the organization to investigate whether an alleged violation of law has occurred; and second, where the lawyer has been engaged to defend an organization or an officer against a claim of a violation of law.

Finally, the Task Force recommends that Rule 1.13 be amended to assure that the organization's highest authority is made aware that a lawyer for the organization has withdrawn or is discharged as a result of circumstances addressed by the Rule.

*Minority Views or Opposition*

The Task Force was unanimous in approving the Task Force Report containing the proposed amendments to Model Rule 1.13, and is not aware of any organized opposition to the amendments.