

1 **Rule 1.7. Conflict of Interest: Current Clients.**

2 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation
3 involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

4 (a)(1) The representation of one client will be directly adverse to another client; or

5 (a)(2) There is a significant risk that the representation of one or more clients will be materially limited
6 by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest
7 of the lawyer.

8 (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer
9 may represent a client if:

10 (b)(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent
11 representation to each affected client;

12 (b)(2) the representation is not prohibited by law;

13 (b)(3) the representation does not involve the assertion of a claim by one client against another client
14 represented by the lawyer in the same litigation or other proceeding before a tribunal; and

15 (b)(4) each affected client gives informed consent, confirmed in writing.

16 **Comment**

17 **General Principles**

18 [1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client.
19 Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client
20 or a third person or from the lawyer's own interests. For specific rules regarding certain concurrent
21 conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of
22 interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed
23 in writing," see Rules 1.0(f) and (b).

24 [2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify
25 the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the
26 representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is
27 consentable; and, 4) if so, consult with the clients affected under paragraph (a)(1) and obtain their
28 informed consent, confirmed in writing. The clients affected under paragraph (a)(1) include both of the
29 clients referred to in paragraph (a)(1) and the one or more clients whose representation might be
30 materially limited under paragraph (a)(2).

31 [3] A conflict of interest may exist before representation is undertaken, in which event the
32 representation must be declined, unless the lawyer obtains the informed consent of each client under the
33 conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt
34 reasonable procedures, appropriate for the size and type of firm and practice, to determine in both
35 litigation and nonlitigation matters the persons and issues involved. See also Comment to Rule 5.1.
36 Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule.

37 As to whether a client-lawyer relationship exists or, having once been established, is continuing, see
38 Comment to Rule 1.3 and Scope.

39 [4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw
40 from the representation, unless the lawyer has obtained the informed consent of the client under the
41 conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer
42 may continue to represent any of the clients is determined both by the lawyer's ability to comply with
43 duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or
44 clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

45 [4a] To eliminate confusion, former Rule 2.2 "Intermediary" has been deleted entirely. The term
46 "intermediation" is changed in Rule 1.7 to "common representation". Comment [4] sets out the analysis
47 that a lawyer should make in order to determine when common representation is improper. The
48 comments to Rule 1.7 specifically instruct lawyers on what informed consent means in the situations.

49 [5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or
50 the addition or realignment of parties in litigation, might create conflicts in the midst of a representation,
51 as when a company sued by the lawyer on behalf of one client is bought by another client represented by
52 the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to
53 withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court
54 approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer
55 must continue to protect the confidences of the client from whose representation the lawyer has
56 withdrawn. See Rule 1.9(c).

57 **Identifying Conflicts of Interest: Directly Adverse**

58 [6] Loyalty to a current client prohibits undertaking representation directly adverse to that client
59 without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one
60 matter against a person the lawyer represents in some other matter, even when the matters are wholly
61 unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the
62 resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the
63 client effectively. In addition, the client on whose behalf the adverse representation is undertaken
64 reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the
65 other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the
66 current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a
67 client who appears as a witness in a lawsuit involving another client, as when the testimony will be
68 damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation
69 in unrelated matters of clients whose interests are only economically adverse, such as representation of
70 competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest
71 and thus may not require consent of the respective clients.

72 [7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked
73 to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the

74 same transaction but in another, unrelated matter, the lawyer could not undertake the representation
75 without the informed consent of each client.

76 **Identifying Conflicts of Interest: Material Limitation**

77 [8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk
78 that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client
79 will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a
80 lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially
81 limited in the lawyer's ability to recommend or advocate all possible positions that each might take
82 because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that
83 would otherwise be available to the client. The mere possibility of subsequent harm does not itself require
84 disclosure and consent. The critical questions are the likelihood that a difference in interests will
85 eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional
86 judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on
87 behalf of the client.

88 **Lawyer's Responsibilities to Former Clients and Other Third Persons**

89 [9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may
90 be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities
91 to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or
92 corporate director.

93 **Personal Interest Conflicts**

94 [10] The lawyer's own interests should not be permitted to have an adverse effect on representation
95 of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it
96 may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has
97 discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm
98 representing the opponent, such discussions could materially limit the lawyer's representation of the
99 client. In addition, a lawyer may not allow related business interests to affect representation, for example,
100 by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule
101 1.8 for specific rules pertaining to a number of personal interest conflicts, including business transactions
102 with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to
103 other lawyers in a law firm).

104 [11] When lawyers representing different clients in the same matter or in substantially related matters
105 are closely related by blood or marriage, there may be a significant risk that client confidences will be
106 revealed and that the lawyer's family relationship will interfere with both loyalty and independent
107 professional judgment. As a result, each client is entitled to know of the existence and implications of the
108 relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a
109 lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a
110 client in a matter where that lawyer is representing another party, unless each client gives informed

111 consent. The disqualification arising from a close family relationship is personal and ordinarily is not
112 imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

113 [12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual
114 relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

115 Interest of Person Paying for a Lawyer's Service

116 [13] A lawyer may be paid from a source other than the client, including a co-client, if the client is
117 informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty
118 or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other
119 source presents a significant risk that the lawyer's representation of the client will be materially limited by
120 the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's
121 responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of
122 paragraph (b) before accepting the representation, including determining whether the conflict is
123 consentable and, if so, that the client has adequate information about the material risks of the
124 representation.

125 **Prohibited Representations**

126 [14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as
127 indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot
128 properly ask for such agreement or provide representation on the basis of the client's consent. When the
129 lawyer is representing more than one client, the question of consentability must be resolved as to each
130 client.

131 [15] Consentability is typically determined by considering whether the interests of the clients will be
132 adequately protected if the clients are permitted to give their informed consent to representation burdened
133 by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances
134 the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent
135 representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

136 [16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is
137 prohibited by applicable law. For example, in some states substantive law provides that the same lawyer
138 may not represent more than one defendant in a capital case, even with the consent of the clients, and
139 under federal criminal statutes certain representations by a former government lawyer are prohibited,
140 despite the informed consent of the former client. In addition, decisional law in some states limits the
141 ability of a governmental client, such as a municipality, to consent to a conflict of interest.

142 [17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest
143 in vigorous development of each client's position when the clients are aligned directly against each other
144 in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against
145 each other within the meaning of this paragraph requires examination of the context of the proceeding.
146 Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a

147 | mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(~~mg~~)), such
148 | representation may be precluded by paragraph (b)(1).

149 | **Informed Consent**

150 | [18] Informed consent requires that each affected client be aware of the relevant circumstances and
151 | of the material and reasonably foreseeable ways that the conflict could have adverse effects on the
152 | interests of that client. See Rule 1.0(f) (informed consent). The information required depends on the
153 | nature of the conflict and the nature of the risks involved. When representation of multiple clients in a
154 | single matter is undertaken, the information must include the implications of the common representation,
155 | including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages
156 | and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

157 | [19] Under some circumstances it may be impossible to make the disclosure necessary to obtain
158 | consent. For example, when the lawyer represents different clients in related matters and one of the
159 | clients refuses to consent to the disclosure necessary to permit the other client to make an informed
160 | decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common
161 | representation can be that each party may have to obtain separate representation with the possibility of
162 | incurring additional costs. These costs, along with the benefits of securing separate representation, are
163 | factors that may be considered by the affected client in determining whether common representation is in
164 | the client's interests.

165 | **Consent Confirmed in Writing**

166 | [20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in
167 | writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly
168 | | records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(~~pr~~)
169 | (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the
170 | client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time
171 | thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the
172 | lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with
173 | a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable
174 | opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing
175 | is required in order to impress upon clients the seriousness of the decision the client is being asked to
176 | make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

177 | **Revoking Consent**

178 | [21] A client who has given consent to a conflict may revoke the consent and, like any other client,
179 | may terminate the lawyer's representation at any time. Whether revoking consent to the client's own
180 | representation precludes the lawyer from continuing to represent other clients depends on the
181 | circumstances, including the nature of the conflict, whether the client revoked consent because of a
182 | material change in circumstances, the reasonable expectations of the other client and whether material
183 | detriment to the other clients or the lawyer would result.

184 Consent to Future Conflict

185 [22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is
186 subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the
187 extent to which the client reasonably understands the material risks that the waiver entails. The more
188 comprehensive the explanation of the types of future representations that might arise and the actual and
189 reasonably foreseeable adverse consequences of those representations, the greater the likelihood that
190 the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of
191 conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to
192 that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be
193 ineffective, because it is not reasonably likely that the client will have understood the material risks
194 involved. On the other hand, if the client is an experienced user of the legal services involved and is
195 reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be
196 effective, particularly if, e.g., the client is independently represented by other counsel in giving consent
197 and the consent is limited to future conflicts unrelated to the subject of the representation. In any case,
198 advance consent cannot be effective if the circumstances that materialize in the future are such as would
199 make the conflict nonconsentable under paragraph (b).

200 Conflicts in Litigation

201 [23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of
202 the clients' consent. On the other hand, simultaneous representation of parties whose interests in
203 litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict
204 may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in
205 relation to an opposing party or the fact that there are substantially different possibilities of settlement of
206 the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential
207 for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a
208 lawyer should decline to represent more than one codefendant. On the other hand, common
209 representation of persons having similar interests in civil litigation is proper if the requirements of
210 paragraph (b) are met.

211 [24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on
212 behalf of different clients. The mere fact that advocating a legal position on behalf of one client might
213 create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter
214 does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that
215 a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing
216 another client in a different case; for example, when a decision favoring one client will create a precedent
217 likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining
218 whether the clients need to be advised of the risk include: where the cases are pending, whether the
219 issue is substantive or procedural, the temporal relationship between the matters, the significance of the
220 issue to the immediate and long-term interests of the clients involved and the clients' reasonable

221 expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed
222 consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or
223 both matters.

224 [25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-
225 action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for
226 purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the
227 consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a
228 lawyer seeking to represent an opponent in a class action does not typically need the consent of an
229 unnamed member of the class whom the lawyer represents in an unrelated matter.

230 **Nonlitigation Conflicts**

231 [26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For
232 a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in
233 determining whether there is significant potential for material limitation include the duration and intimacy
234 of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer,
235 the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The
236 question is often one of proximity and degree. See Comment [8].

237 [27] For example, conflict questions may arise in estate planning and estate administration. A lawyer
238 may be called upon to prepare wills for several family members, such as husband and wife, and,
239 depending upon the circumstances, a conflict of interest may be present. In estate administration the
240 identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is
241 the fiduciary; under another view, the client is the estate or trust, including its beneficiaries. In order to
242 comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties
243 involved.

244 [28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not
245 represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other,
246 but common representation is permissible where the clients are generally aligned in interest even though
247 there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a
248 relationship between clients on an amicable and mutually advantageous basis; for example, in helping to
249 organize a business in which two or more clients are entrepreneurs, working out the financial
250 reorganization of an enterprise in which two or more clients have an interest or arranging a property
251 distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by
252 developing the parties' mutual interests. Otherwise, each party might have to obtain separate
253 representation, with the possibility of incurring additional cost, complication or even litigation. Given these
254 and other relevant factors, the clients may prefer that the lawyer act for all of them.

255 **Special Considerations in Common Representation**

256 [29] In considering whether to represent multiple clients in the same matter, a lawyer should be
257 mindful that if the common representation fails because the potentially adverse interests cannot be

258 reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will
259 be forced to withdraw from representing all of the clients if the common representation fails. In some
260 situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a
261 lawyer cannot undertake common representation of clients where contentious litigation or negotiations
262 between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial
263 between commonly represented clients, representation of multiple clients is improper when it is unlikely
264 that impartiality can be maintained. Generally, if the relationship between the parties has already
265 assumed antagonism, the possibility that the clients' interests can be adequately served by common
266 representation is not very good. Other relevant factors are whether the lawyer subsequently will represent
267 both parties on a continuing basis and whether the situation involves creating or terminating a relationship
268 between the parties.

269 [30] A particularly important factor in determining the appropriateness of common representation is
270 the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-
271 client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does
272 not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will
273 not protect any such communications, and the client should be so advised.

274 [31] As to the duty of confidentiality, continued common representation will almost certainly be
275 inadequate if one client asks the lawyer not to disclose to the other client information relevant to the
276 common representation. This is so because the lawyer has an equal duty of loyalty to each client, and
277 each client has the right to be informed of anything bearing on the representation that might affect that
278 client's interests and the right to expect that the lawyer will use that information to that client's benefit.
279 See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process
280 of obtaining each client's informed consent, advise each client that information will be shared and that the
281 lawyer will have to withdraw if one client decides that some matter material to the representation should
282 be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the
283 representation when the clients have agreed, after being properly informed, that the lawyer will keep
284 certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose
285 one client's trade secrets to another client will not adversely affect representation involving a joint venture
286 between the clients and agree to keep that information confidential with the informed consent of both
287 clients.

288 [32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear
289 that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that
290 the clients may be required to assume greater responsibility for decisions than when each client is
291 separately represented. Any limitations on the scope of the representation made necessary as a result of
292 the common representation should be fully explained to the clients at the outset of the representation.
293 See Rule 1.2(c).

294 [33] Subject to the above limitations, each client in the common representation has the right to loyal
295 and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client.
296 The client also has the right to discharge the lawyer as stated in Rule 1.16.

297 **Organizational Clients**

298 [34] A lawyer who represents a corporation or other organization does not, by virtue of that
299 representation, necessarily represent any constituent or affiliated organization, such as a parent or
300 subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting
301 representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the
302 affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer
303 and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or
304 the lawyer's obligations to either the organizational client or the new client are likely to limit materially the
305 lawyer's representation of the other client.

306 [35] A lawyer for a corporation or other organization who is also a member of its board of directors
307 should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on
308 to advise the corporation in matters involving actions of the directors. Consideration should be given to
309 the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the
310 lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from
311 another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's
312 independence of professional judgment, the lawyer should not serve as a director or should cease to act
313 as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members
314 of the board that in some circumstances matters discussed at board meetings while the lawyer is present
315 in the capacity of director might not be protected by the attorney-client privilege and that conflict of
316 interest considerations might require the lawyer's recusal as a director or might require the lawyer and the
317 lawyer's firm to decline representation of the corporation in a matter.

318