

1 **Rule 1.11. Special Conflicts of Interest for Former and Current Government Employees.**

2 (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public
3 officer or employee of the government:

4 (a)(1) is subject to Rule 1.9(c); and

5 (a)(2) shall not otherwise represent a client in connection with a matter in which the lawyer
6 participated personally and substantially as a public officer or employee, unless the appropriate
7 government agency gives its informed consent, confirmed in writing, to the representation.

8 (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with
9 which that lawyer is associated may knowingly undertake or continue representation in such a matter
10 unless:

11 (b)(1) the disqualified lawyer is timely screened from any participation in the matter and is
12 apportioned no part of the fee therefrom; and

13 (b)(2) written notice is promptly given to the appropriate government agency to enable it to
14 ascertain compliance with the provisions of this Rule.

15 (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows
16 is confidential government information about a person acquired when the lawyer was a public officer or
17 employee may not represent a private client whose interests are adverse to that person in a matter in
18 which the information could be used to the material disadvantage of that person. As used in this Rule, the
19 term "confidential government information" means information that has been obtained under
20 governmental authority and which at the time the Rule is applied, the government is prohibited by law
21 from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to
22 the public. A firm with which that lawyer is associated may undertake or continue representation in the
23 matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned
24 no part of the fee therefrom.

25 (d) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee:

26 (d)(1) is subject to Rules 1.7 and 1.9; and

27 (d)(2) shall not:

28 (d)(2)(i) participate in a matter in which the lawyer participated personally and substantially
29 while in private practice or nongovernmental employment, unless the appropriate government
30 agency gives its informed consent, confirmed in writing; or

31 (d)(2)(ii) negotiate for private employment with any person who is involved as a party or as
32 lawyer for a party in a matter in which the lawyer is participating personally and substantially,
33 except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may
34 negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions
35 stated in Rule 1.12(b).

36 (e) As used in this Rule, the term "matter" includes:

37 (e)(1) any judicial or other proceeding, application, request for a ruling or other determination,
38 contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter
39 involving a specific party or parties; and

40 (e)(2) any other matter covered by the conflict of interest rules of the appropriate government
41 agency.

42 Comment

43 [1] A lawyer, who has served or is currently serving as a public office or employee is personally
44 subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of
45 interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government
46 regulations regarding conflicts of interest. Such statutes and regulations may circumscribe the extent to
47 which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of
48 informed consent.

49 [2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served
50 or is currently serving as an officer or employee of the government toward a former government or private
51 client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b)
52 sets forth a special imputation rule for former government lawyers that provides for screening and notice.
53 Because of the special problems raised by imputation within a government agency, paragraph (d) does
54 not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other
55 associated government officers or employees, although ordinarily it will be prudent to screen such
56 lawyers.

57 [3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client
58 and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting
59 public office for the advantage of another client. For example, a lawyer who has pursued a claim on
60 behalf of the government may not pursue the same claim on behalf of a later private client after the
61 lawyer has left government service, except when authorized to do so by the government agency under
62 paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue
63 the claim on behalf of the government, except when authorized to do so by paragraph (d). As with
64 paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these
65 paragraphs.

66 [4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a
67 government agency and another client, public or private, the risk exists that power or discretion vested in
68 that agency might be used for the special benefit of the other client. A lawyer should not be in a position
69 where benefit to the other client might affect performance of the lawyer's professional functions on behalf
70 of the government. Also, unfair advantage could accrue to the other client by reason of access to
71 confidential government information about the client's adversary obtainable only through the lawyer's
72 government service. On the other hand, the rules governing lawyers presently or formerly employed by a
73 government agency should not be so restrictive as to inhibit transfer of employment to and from the

74 government. The government has a legitimate need to attract qualified lawyers as well as to maintain high
75 ethical standards. Thus a former government lawyer is disqualified only from particular matters in which
76 the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph
77 (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against
78 entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters
79 involving a specific party or parties, rather than extending disqualification to all substantive issues on
80 which the lawyer worked, serves a similar function.

81 [5] When a lawyer has been employed by one government agency and then moves to a second
82 government agency, it may be appropriate to treat that second agency as another client for purposes of
83 this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency.
84 However, because the conflict of interest is governed by paragraph (d), the latter agency is not required
85 to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government
86 agencies should be regarded as the same or different clients for conflict of interest purposes is beyond
87 the scope of these Rules. See Rule 1.13 Comment [6].

88 [6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(km) (requirements for
89 screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership
90 share established by prior independent agreement, but that lawyer may not receive compensation directly
91 relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

92 [7] Notice, including a description of the screened lawyer's prior representation and of the screening
93 procedures employed, generally should be given as soon as practicable after the need for screening
94 becomes apparent.

95 [8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which
96 means actual knowledge; it does not operate with respect to information that merely could be imputed to
97 the lawyer.

98 [9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a
99 government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

100 [10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In
101 determining whether two particular matters are the same, the lawyer should consider the extent to which
102 the matters involve the same basic facts, the same or related parties, and the time elapsed.