

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 involves
3 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 by
6 the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of
7 the lawyer.

8 (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may
9 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(ef) and (b).

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

31 [3] A conflict of interest may exist before representation is undertaken, in which event the representation
32 must be declined, unless the lawyer obtains the informed consent of each client under the conditions of
33 paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable
34 procedures, appropriate for the size and type of firm and practice, to determine in both litigation and
35 nonlitigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused
36 by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a
37 client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3
38 and Scope.

39 [4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from
40 the representation, unless the lawyer has obtained the informed consent of the client under the conditions
41 of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may
42 continue to represent any of the clients is determined both by the lawyer's ability to comply with duties
43 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 the
50 addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as
51 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 without
59 that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter
60 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 to
73 represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same
74 transaction but in another, unrelated matter, the lawyer could not undertake the representation without the
75 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 that a
78 lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be
79 materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer
80 asked to represent several individuals seeking to form a joint venture is likely to be materially limited in
81 the lawyer's ability to recommend or advocate all possible positions that each might take because of the
82 lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be
83 available to the client. The mere possibility of subsequent harm does not itself require disclosure and
84 consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does,
85 whether it will materially interfere with the lawyer's independent professional judgment in considering
86 alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

87 Lawyer's Responsibilities to Former Clients and Other Third Persons

88 [9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be
89 materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to
90 other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate
91 director.

92 Personal Interest Conflicts

93 [10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a
94 client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may
95 be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has
96 discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm
97 representing the opponent, such discussions could materially limit the lawyer's representation of the
98 client. In addition, a lawyer may not allow related business interests to affect representation, for example,
99 by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule
100 1.8 for specific rules pertaining to a number of personal interest conflicts, including business transactions
101 with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to
102 other lawyers in a law firm).

103 [11] When lawyers representing different clients in the same matter or in substantially related matters are
104 closely related by blood or marriage, there may be a significant risk that client confidences will be
105 revealed and that the lawyer's family relationship will interfere with both loyalty and independent
106 professional judgment. As a result, each client is entitled to know of the existence and implications of the
107 relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a
108 lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a
109 client in a matter where that lawyer is representing another party, unless each client gives informed
110 consent. The disqualification arising from a close family relationship is personal and ordinarily is not
111 imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

112 [12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual
113 relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

114 Interest of Person Paying for a Lawyer's Service

115 [13] A lawyer may be paid from a source other than the client, including a co-client, if the client is
116 informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty
117 or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other
118 source presents a significant risk that the lawyer's representation of the client will be materially limited by
119 the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's
120 responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of
121 paragraph (b) before accepting the representation, including determining whether the conflict is
122 consentable and, if so, that the client has adequate information about the material risks of the
123 representation.

124 Prohibited Representations

125 [14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in
126 paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask
127 for such agreement or provide representation on the basis of the client's consent. When the lawyer is
128 representing more than one client, the question of consentability must be resolved as to each client.

129 [15] Consentability is typically determined by considering whether the interests of the clients will be
130 adequately protected if the clients are permitted to give their informed consent to representation burdened
131 by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances
132 the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent
133 representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

134 [16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is
135 prohibited by applicable law. For example, in some states substantive law provides that the same lawyer
136 may not represent more than one defendant in a capital case, even with the consent of the clients, and
137 under federal criminal statutes certain representations by a former government lawyer are prohibited,
138 despite the informed consent of the former client. In addition, decisional law in some states limits the
139 ability of a governmental client, such as a municipality, to consent to a conflict of interest.

140 [17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in
141 vigorous development of each client's position when the clients are aligned directly against each other in

142 the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each
143 other within the meaning of this paragraph requires examination of the context of the proceeding.
144 Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a
145 mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such
146 representation may be precluded by paragraph (b)(1).

147 Informed Consent

148 [18] Informed consent requires that each affected client be aware of the relevant circumstances and of
149 the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests
150 of that client. See Rule 1.0(ef) (informed consent). The information required depends on the nature of the
151 conflict and the nature of the risks involved. When representation of multiple clients in a single matter is
152 undertaken, the information must include the implications of the common representation, including
153 possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks
154 involved. See Comments [30] and [31] (effect of common representation on confidentiality).

155 [19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent.
156 For example, when the lawyer represents different clients in related matters and one of the clients refuses
157 to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer
158 cannot properly ask the latter to consent. In some cases the alternative to common representation can be
159 that each party may have to obtain separate representation with the possibility of incurring additional
160 costs. These costs, along with the benefits of securing separate representation, are factors that may be
161 considered by the affected client in determining whether common representation is in the client's
162 interests.

163 Consent Confirmed in Writing

164 [20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing.
165 Such a writing may consist of a document executed by the client or one that the lawyer promptly records
166 and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(hp) (writing
167 includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client
168 gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
169 See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to
170 talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict
171 of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity
172 to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required
173 in order to impress upon clients the seriousness of the decision the client is being asked to make and to
174 avoid disputes or ambiguities that might later occur in the absence of a writing.

175 Revoking Consent

176 [21] A client who has given consent to a conflict may revoke the consent and, like any other client, may
177 terminate the lawyer's representation at any time. Whether revoking consent to the client's own
178 representation precludes the lawyer from continuing to represent other clients depends on the
179 circumstances, including the nature of the conflict, whether the client revoked consent because of a
180 material change in circumstances, the reasonable expectations of the other client and whether material
181 detriment to the other clients or the lawyer would result.

182 Consent to Future Conflict

183 [22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is
184 subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the
185 extent to which the client reasonably understands the material risks that the waiver entails. The more
186 comprehensive the explanation of the types of future representations that might arise and the actual and
187 reasonably foreseeable adverse consequences of those representations, the greater the likelihood that
188 the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of
189 conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to
190 that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be

191 ineffective, because it is not reasonably likely that the client will have understood the material risks
192 involved. On the other hand, if the client is an experienced user of the legal services involved and is
193 reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be
194 effective, particularly if, e.g., the client is independently represented by other counsel in giving consent
195 and the consent is limited to future conflicts unrelated to the subject of the representation. In any case,
196 advance consent cannot be effective if the circumstances that materialize in the future are such as would
197 make the conflict nonconsentable under paragraph (b).

198 Conflicts in Litigation

199 [23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the
200 clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation
201 may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by
202 reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an
203 opposing party or the fact that there are substantially different possibilities of settlement of the claims or
204 liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of
205 interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should
206 decline to represent more than onecodefendant. On the other hand, common representation of persons
207 having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

208 [24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on
209 behalf of different clients. The mere fact that advocating a legal position on behalf of one client might
210 create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter
211 does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that
212 a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing
213 another client in a different case; for example, when a decision favoring one client will create a precedent
214 likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining
215 whether the clients need to be advised of the risk include: where the cases are pending, whether the
216 issue is substantive or procedural, the temporal relationship between the matters, the significance of the
217 issue to the immediate and long-term interests of the clients involved and the clients' reasonable
218 expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed
219 consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or
220 both matters.

221 [25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action
222 lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for
223 purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the
224 consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a
225 lawyer seeking to represent an opponent in a class action does not typically need the consent of an
226 unnamed member of the class whom the lawyer represents in an unrelated matter.

227 Nonlitigation Conflicts

228 [26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a
229 discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in
230 determining whether there is significant potential for material limitation include the duration and intimacy
231 of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer,
232 the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The
233 question is often one of proximity and degree. See Comment [8].

234 [27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may
235 be called upon to prepare wills for several family members, such as husband and wife, and, depending
236 upon the circumstances, a conflict of interest may be present. In estate administration the identity of the
237 client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary;
238 under another view, the client is the estate or trust, including its beneficiaries. In order to comply with
239 conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

240 [28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not
241 represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other,
242 but common representation is permissible where the clients are generally aligned in interest even though
243 there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a
244 relationship between clients on an amicable and mutually advantageous basis; for example, in helping to
245 organize a business in which two or more clients are entrepreneurs, working out the financial
246 reorganization of an enterprise in which two or more clients have an interest or arranging a property
247 distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by
248 developing the parties' mutual interests. Otherwise, each party might have to obtain separate
249 representation, with the possibility of incurring additional cost, complication or even litigation. Given these
250 and other relevant factors, the clients may prefer that the lawyer act for all of them.

251 Special Considerations in Common Representation

252 [29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful
253 that if the common representation fails because the potentially adverse interests cannot be reconciled,
254 the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to
255 withdraw from representing all of the clients if the common representation fails. In some situations, the
256 risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot
257 undertake common representation of clients where contentious litigation or negotiations between them
258 are imminent or contemplated. Moreover, because the lawyer is required to be impartial between
259 commonly represented clients, representation of multiple clients is improper when it is unlikely that
260 impartiality can be maintained. Generally, if the relationship between the parties has already assumed
261 antagonism, the possibility that the clients' interests can be adequately served by common representation
262 is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties
263 on a continuing basis and whether the situation involves creating or terminating a relationship between
264 the parties.

265 [30] A particularly important factor in determining the appropriateness of common representation is the
266 effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client
267 privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not
268 attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not
269 protect any such communications, and the client should be so advised.

270 [31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate
271 if one client asks the lawyer not to disclose to the other client information relevant to the common
272 representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client
273 has the right to be informed of anything bearing on the representation that might affect that client's
274 interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule
275 1.4. The lawyer should, at the outset of the common representation and as part of the process of
276 obtaining each client's informed consent, advise each client that information will be shared and that the
277 lawyer will have to withdraw if one client decides that some matter material to the representation should
278 be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the
279 representation when the clients have agreed, after being properly informed, that the lawyer will keep
280 certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose
281 one client's trade secrets to another client will not adversely affect representation involving a joint venture
282 between the clients and agree to keep that information confidential with the informed consent of both
283 clients.

284 [32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that
285 the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the
286 clients may be required to assume greater responsibility for decisions than when each client is separately
287 represented. Any limitations on the scope of the representation made necessary as a result of the
288 common representation should be fully explained to the clients at the outset of the representation. See
289 Rule 1.2(c).

290 [33] Subject to the above limitations, each client in the common representation has the right to loyal and
291 diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The
292 client also has the right to discharge the lawyer as stated in Rule 1.16.

293 Organizational Clients

294 [34] A lawyer who represents a corporation or other organization does not, by virtue of that
295 representation, necessarily represent any constituent or affiliated organization, such as a parent or
296 subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting
297 representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the
298 affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer
299 and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or
300 the lawyer's obligations to either the organizational client or the new client are likely to limit materially the
301 lawyer's representation of the other client.

302 [35] A lawyer for a corporation or other organization who is also a member of its board of directors should
303 determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to
304 advise the corporation in matters involving actions of the directors. Consideration should be given to the
305 frequency with which such situations may arise, the potential intensity of the conflict, the effect of the
306 lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from
307 another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's
308 independence of professional judgment, the lawyer should not serve as a director or should cease to act
309 as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members
310 of the board that in some circumstances matters discussed at board meetings while the lawyer is present
311 in the capacity of director might not be protected by the attorney-client privilege and that conflict of
312 interest considerations might require the lawyer's recusal as a director or might require the lawyer and the
313 lawyer's firm to decline representation of the corporation in a matter.

Effective November 1, 2017