

1 **Rule 1.9. Duties to Former Clients.**

2 (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another
3 person in the same or a substantially related matter in which that person's interests are materially adverse
4 to the interests of the former client unless the former client gives informed consent, confirmed in writing.

5 (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in
6 which a firm with which the lawyer formerly was associated had previously represented a client

7 (b)(1) whose interests are materially adverse to that person; and

8 (b)(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is
9 material to the matter; unless the former client gives informed consent, confirmed in writing.

10 (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has
11 formerly represented a client in a matter shall not thereafter:

12 (c)(1) use information relating to the representation to the disadvantage of the former client
13 except as these Rules would permit or require with respect to a client, or when the information has
14 become generally known; or

15 (c)(2) reveal information relating to the representation except as these Rules would permit or
16 require with respect to a client.

17 Comment

18 [1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect
19 to confidentiality and conflicts of interest and thus may not represent another client except in conformity
20 with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a
21 new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an
22 accused person could not properly represent the accused in a subsequent civil action against the
23 government concerning the same transaction. Nor could a lawyer who has represented multiple clients in
24 a matter represent one of the clients against the others in the same or a substantially related matter after
25 a dispute arose among the clients in that matter, unless all affected clients give informed consent. See
26 Comment [9]. Current and former government lawyers must comply with this Rule to the extent required
27 by Rule 1.11.

28 [2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or
29 transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has
30 been directly involved in a specific transaction, subsequent representation of other clients with materially
31 adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently
32 handled a type of problem for a former client is not precluded from later representing another client in a
33 factually distinct problem of that type even though the subsequent representation involves a position
34 adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers
35 between defense and prosecution functions within the same military jurisdictions. The underlying question
36 is whether the lawyer was so involved in the matter that the subsequent representation can be justly
37 regarded as a changing of sides in the matter in question.

38 [3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or
39 legal dispute or if there otherwise is a substantial risk that confidential factual information as would
40 normally have been obtained in the prior representation would materially advance the client's position in
41 the subsequent matter. For example, a lawyer who has represented a businessperson and learned
42 extensive private financial information about that person may not then represent that person's spouse in
43 seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental
44 permits to build a shopping center would be precluded from representing neighbors seeking to oppose
45 rezoning of the property on the basis of environmental considerations; however, the lawyer would not be
46 precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping
47 center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to
48 other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior
49 representation may have been rendered obsolete by the passage of time, a circumstance that may be
50 relevant in determining whether two representations are substantially related. In the case of an
51 organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a
52 subsequent representation; on the other hand, knowledge of specific facts gained in a prior
53 representation that are relevant to the matter in question ordinarily will preclude such a representation. A
54 former client is not required to reveal the confidential information learned by the lawyer in order to
55 establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A
56 conclusion about the possession of such information may be based on the nature of the services the
57 lawyer provided the former client and information that would in ordinary practice be learned by a lawyer
58 providing such services.

59 Lawyers Moving Between Firms

60 [4] When lawyers have been associated within a firm but then end their association, the question of
61 whether a lawyer should undertake representation is more complicated. There are several competing
62 considerations. First, the client previously represented by the former firm must be reasonably assured that
63 the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as
64 to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not
65 unreasonably hamper lawyers from forming new associations and taking on new clients after having left a
66 previous association. In this connection, it should be recognized that today many lawyers practice in
67 firms, that many lawyers to some degree limit their practice to one field or another, and that many move
68 from one association to another several times in their careers. If the concept of imputation were applied
69 with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from
70 one practice setting to another and of the opportunity of clients to change counsel.

71 [5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual
72 knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired
73 no knowledge or information relating to a particular client of the firm, and that lawyer later joined another
74 firm, neither the lawyer individually nor the second firm is disqualified from representing another client in

75 the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the
76 restrictions on a firm once a lawyer has terminated association with the firm.

77 [6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences,
78 deductions or working presumptions that reasonably may be made about the way in which lawyers work
79 together. A lawyer may have general access to files of all clients of a law firm and may regularly
80 participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all
81 information about all the firm's clients. In contrast, another lawyer may have access to the files of only a
82 limited number of clients and participate in discussions of the affairs of no other clients; in the absence of
83 information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the
84 clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest
85 upon the firm whose disqualification is sought.

86 [7] Independent of the question of disqualification of a firm, a lawyer changing professional
87 association has a continuing duty to preserve confidentiality of information about a client formerly
88 represented. See Rules 1.6 and 1.9(c).

89 [8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a
90 client may not subsequently be used or revealed by the lawyer to the disadvantage of the client.
91 However, the fact that a lawyer has once served a client does not preclude the lawyer from using
92 generally known information about that client when later representing another client.

93 [9] The provisions of this Rule are for the protection of former clients and can be waived if the client
94 gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See
95 Rule 1.0(e). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With
96 regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.