

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

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

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

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

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

12 (b)(1) the disqualified licensed paralegal practitioner is timely screened from any
13 participation in the matter and is apportioned no part of the fee therefrom; and

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

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

28 (d) Except as law may otherwise expressly permit, a licensed paralegal practitioner serving as
29 a public officer or employee:

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

31 (d)(2) shall not:

32 (d)(2)(i) participate in a matter in which the licensed paralegal practitioner participated
33 personally and substantially while in private practice or nongovernmental employment, unless
34 the appropriate government agency gives its informed consent, confirmed in writing; or

35 (d)(2)(ii) negotiate for private employment with any person who is involved as a party or as
36 counsel for a party in a matter in which the licensed paralegal practitioner is participating
37 personally and substantially.

38 (e) As used in this Rule, the term “matter” includes:

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

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

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45 Comment

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

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

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

70 [4] This Rule represents a balancing of interests. On the one hand, where the successive
71 clients are a government agency and another client, public or private, the risk exists that power or
72 discretion vested in that agency might be used for the special benefit of the other client. A
73 licensed paralegal practitioner should not be in a position where benefit to the other client might
74 affect performance of the licensed paralegal practitioner's professional functions on behalf of the
75 government. Also, unfair advantage could accrue to the other client by reason of access to
76 confidential government information about the client's adversary obtainable only through the
77 licensed paralegal practitioner's government service. On the other hand, the rules governing
78 licensed paralegal practitioners presently or formerly employed by a government agency should
79 not be so restrictive as to inhibit transfer of employment to and from the government. The
80 government has a legitimate interest in attracting qualified licensed paralegal practitioners as
81 well as in maintaining high ethical standards. Thus a former government licensed paralegal
82 practitioner is disqualified only from particular matters in which the licensed paralegal
83 practitioner participated personally and substantially. The provisions for screening and waiver in
84 paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a
85 deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2)
86 and (d)(2) to matters involving a specific party or parties, rather than extending disqualification
87 to all substantive issues on which the licensed paralegal practitioner worked, serves a similar
88 function.

89 [5] When a licensed paralegal practitioner has been employed by one government agency and
90 then moves to a second government agency, it may be appropriate to treat that second agency as
91 another client for purposes of this Rule, as when a licensed paralegal practitioner is employed by
92 a city and subsequently is employed by a federal agency. However, because the conflict of

93 interest is governed by paragraph (d), the latter agency is not required to screen the licensed
94 paralegal practitioner as paragraph (b) requires a law firm to do. The question of whether two
95 government agencies should be regarded as the same or different clients for conflict of interest
96 purposes is beyond the scope of these Rules.

97 [6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(m)
98 (requirements for screening procedures). These paragraphs do not prohibit a licensed paralegal
99 practitioner from receiving a salary or partnership share established by prior independent
100 agreement, but that licensed paralegal practitioner may not receive compensation directly
101 relating to the fee in the matter in which the licensed paralegal practitioner is disqualified.

102 [7] Notice, including a description of the screened licensed paralegal practitioner's prior
103 representation and of the screening procedures employed, generally should be given as soon as
104 practicable after the need for screening becomes apparent.

105 [8] Paragraph (c) operates only when the licensed paralegal practitioner in question has
106 knowledge of the information, which means actual knowledge; it does not operate with respect to
107 information that merely could be imputed to the licensed paralegal practitioner.

108 [9] Reserved.

109 [10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In
110 determining whether two particular matters are the same, the licensed paralegal practitioner
111 should consider the extent to which the matters involve the same basic facts, the same or related
112 parties, and the time elapsed.

Effective November 1, 2018