

1 **Rule 1.9. Duties to former clients.**

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

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

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

10 (b)(2) about whom the licensed paralegal practitioner had acquired information
11 protected by Rules 1.6 and 1.9(c) that is material to the matter, unless the former client
12 gives informed consent, confirmed in writing.

13 (c) A licensed paralegal practitioner who has formerly represented a client in a matter
14 or whose present or former firm has formerly represented a client in a matter shall not
15 thereafter:

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

19 (c)(2) reveal information relating to the representation except as these Rules would
20 permit or require.

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22 **Comment**

23 [1] After termination of a licensed paralegal practitioner-client relationship, a licensed
24 paralegal practitioner has certain continuing duties with respect to confidentiality and
25 conflicts of interest and thus may not represent another client except in conformity with
26 this Rule. Under this Rule, for example, a licensed paralegal practitioner who has
27 represented multiple clients in a matter could not represent one of the clients against the
28 others in the same or a substantially related matter after a dispute arose among the clients
29 in that matter, unless all affected clients give informed consent. See Comment [9]. Current
30 and former government licensed paralegal practitioners must comply with this Rule to the
31 extent required by Rule 1.11.

32 [2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular
33 situation or transaction. The licensed paralegal practitioner's involvement in a matter can
34 also be a question of degree. When a licensed paralegal practitioner has been directly

35 involved in a specific transaction, subsequent representation of other clients with
36 materially adverse interests in that transaction clearly is prohibited. On the other hand, a
37 licensed paralegal practitioner who recurrently handled a type of problem for a former
38 client is not precluded from later representing another client in a factually distinct problem
39 of that type even though the subsequent representation involves a position adverse to the
40 prior client. The underlying question is whether the licensed paralegal practitioner was so
41 involved in the matter that the subsequent representation can be justly regarded as a
42 changing of sides in the matter in question.

43 [3] Matters are "substantially related" for purposes of this Rule if they involve the same
44 transaction or legal dispute or if there otherwise is a substantial risk that confidential
45 factual information as would normally have been obtained in the prior representation
46 would materially advance the client's position in the subsequent matter. For example, a
47 licensed paralegal practitioner who has represented a businessperson and learned
48 extensive private financial information about that person may not then represent that
49 person's spouse in seeking a divorce. Information that has been disclosed to the public or
50 to other parties adverse to the former client ordinarily will not be disqualifying.
51 Information acquired in a prior representation may have been rendered obsolete by the
52 passage of time, a circumstance that may be relevant in determining whether two
53 representations are substantially related. ~~In the case of an organizational client, general~~
54 ~~knowledge of the client's policies and practices ordinarily will not preclude a subsequent~~
55 ~~representation; on the other hand, knowledge of specific facts gained in a prior~~
56 ~~representation that are relevant to the matter in question ordinarily will preclude such a~~
57 ~~representation.~~ A former client is not required to reveal the confidential information
58 learned by the licensed paralegal practitioner in order to establish a substantial risk that the
59 licensed paralegal practitioner has confidential information to use in the subsequent
60 matter. A conclusion about the possession of such information may be based on the nature
61 of the services the licensed paralegal practitioner provided the former client and
62 information that would in ordinary practice be learned by a licensed paralegal practitioner
63 providing such services.

64 Licensed Paralegal Practitioners Moving Between Firms

65 [4] When licensed paralegal practitioners have been associated within a firm but then
66 end their association, the question of whether a licensed paralegal practitioner should
67 undertake representation is more complicated. There are several competing
68 considerations. First, the client previously represented by the former firm must be

69 reasonably assured that the principle of loyalty to the client is not compromised. Second,
70 the rule should not be so broadly cast as to preclude other persons from having
71 reasonable choice of legal counsel. Third, the rule should not unreasonably hamper
72 licensed paralegal practitioners from forming new associations and taking on new clients
73 after having left a previous association. If the concept of imputation were applied with
74 unqualified rigor, the result would be radical curtailment of the opportunity of licensed
75 paralegal practitioners to move from one practice setting to another and of the opportunity
76 of clients to change counsel.

77 [5] Paragraph (b) operates to disqualify the licensed paralegal practitioner only when
78 the licensed paralegal practitioner involved has actual knowledge of information protected
79 by Rules 1.6 and 1.9(c). Thus, if a licensed paralegal practitioner while with one firm
80 acquired no knowledge or information relating to a particular client of the firm, and that
81 licensed paralegal practitioner later joined another firm, neither the licensed paralegal
82 practitioner individually nor the second firm is disqualified from representing another
83 client in the same or a related matter even though the interests of the two clients conflict.
84 See Rule 1.10(b) for the restrictions on a firm once a licensed paralegal practitioner has
85 terminated association with the firm.

86 [6] Application of paragraph (b) depends on a situation's particular facts, aided by
87 inferences, deductions or working presumptions that reasonably may be made about the
88 way in which licensed paralegal practitioners work together. A licensed paralegal
89 practitioner may have general access to files of all clients of a law firm and may regularly
90 participate in discussions of their affairs; it should be inferred that such a licensed
91 paralegal practitioner in fact is privy to all information about all the firm's clients. In
92 contrast, another licensed paralegal practitioner may have access to the files of only a
93 limited number of clients and participate in discussions of the affairs of no other clients; in
94 the absence of information to the contrary, it should be inferred that such a licensed
95 paralegal practitioner in fact is privy to information about the clients actually served but
96 not those of other clients. In such an inquiry, the burden of proof should rest upon the firm
97 whose disqualification is sought.

98 [7] Independent of the question of disqualification of a firm, a licensed paralegal
99 practitioner changing professional association has a continuing duty to preserve
100 confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

101 [8] Paragraph (c) provides that information acquired by the licensed paralegal
102 practitioner in the course of representing a client may not subsequently be used or

103 revealed by the licensed paralegal practitioner to the disadvantage of the client. However,
104 the fact that a licensed paralegal practitioner has once served a client does not preclude the
105 licensed paralegal practitioner from using generally known information about that client
106 when later representing another client.

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107 [9] The provisions of this Rule are for the protection of former clients and can be
108 waived if the client gives informed consent, which consent must be confirmed in writing
109 under paragraphs (a) and (b). See Rule 1.0(b) and (f). With regard to the effectiveness of an
110 advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm
111 with which a licensed paralegal practitioner is or was formerly associated, see Rule 1.10.

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