

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

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

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

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

37 As to whether a client-lawyer relationship exists or, having once been established, is continuing, see  
38 Comment to Rule 1.3 and Scope.

39 [4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw  
40 from the representation, unless the lawyer has obtained the informed consent of the client under the  
41 conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer  
42 may continue to represent any of the clients is determined both by the lawyer's ability to comply with  
43 duties 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  
50 the addition or realignment of parties in litigation, might create conflicts in the midst of a representation,  
51 as 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  
59 without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one  
60 matter 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  
73 to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the

74 same transaction but in another, unrelated matter, the lawyer could not undertake the representation  
75 without the 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  
78 that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client  
79 will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a  
80 lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially  
81 limited in the lawyer's ability to recommend or advocate all possible positions that each might take  
82 because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that  
83 would otherwise be available to the client. The mere possibility of subsequent harm does not itself require  
84 disclosure and consent. The critical questions are the likelihood that a difference in interests will  
85 eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional  
86 judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on  
87 behalf of the client.

88 **Lawyer's Responsibilities to Former Clients and Other Third Persons**

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

93 **Personal Interest Conflicts**

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

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

111 consent. The disqualification arising from a close family relationship is personal and ordinarily is not  
112 imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

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

#### 115 Interest of Person Paying for a Lawyer's Service

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

#### 125 **Prohibited Representations**

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

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

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

142 [17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest  
143 in vigorous development of each client's position when the clients are aligned directly against each other  
144 in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against  
145 each other within the meaning of this paragraph requires examination of the context of the proceeding.  
146 Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a

147 | mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(~~m~~g)), such  
148 | representation may be precluded by paragraph (b)(1).

#### 149 | **Informed Consent**

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

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

#### 165 | **Consent Confirmed in Writing**

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

#### 177 | **Revoking Consent**

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

**184 Consent to Future Conflict**

185 [22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is  
186 subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the  
187 extent to which the client reasonably understands the material risks that the waiver entails. The more  
188 comprehensive the explanation of the types of future representations that might arise and the actual and  
189 reasonably foreseeable adverse consequences of those representations, the greater the likelihood that  
190 the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of  
191 conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to  
192 that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be  
193 ineffective, because it is not reasonably likely that the client will have understood the material risks  
194 involved. On the other hand, if the client is an experienced user of the legal services involved and is  
195 reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be  
196 effective, particularly if, e.g., the client is independently represented by other counsel in giving consent  
197 and the consent is limited to future conflicts unrelated to the subject of the representation. In any case,  
198 advance consent cannot be effective if the circumstances that materialize in the future are such as would  
199 make the conflict nonconsentable under paragraph (b).

**200 Conflicts in Litigation**

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

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

221 expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed  
222 consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or  
223 both matters.

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

### 230 **Nonlitigation Conflicts**

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

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

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

### 255 **Special Considerations in Common Representation**

256 [29] In considering whether to represent multiple clients in the same matter, a lawyer should be  
257 mindful that if the common representation fails because the potentially adverse interests cannot be

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

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

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

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

294 [33] Subject to the above limitations, each client in the common representation has the right to loyal  
295 and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client.  
296 The client also has the right to discharge the lawyer as stated in Rule 1.16.

297 **Organizational Clients**

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

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

318