

Rule 1.7. Conflict of Interest: Current Clients.

1 (a) Except as provided in paragraph (b), a licensed paralegal practitioner shall not represent a
2 client if the representation involves a concurrent conflict of interest. A concurrent conflict of
3 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
6 materially limited by the licensed paralegal practitioner's responsibilities to another client, a
7 former client or a third person or by a personal interest of the licensed paralegal practitioner.

8 (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a
9 licensed paralegal practitioner may represent a client if:

10 (b)(1) the licensed paralegal practitioner reasonably believes that the licensed paralegal
11 practitioner will be able to provide competent and diligent 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
14 another client represented by the licensed paralegal practitioner in the same litigation or other
15 proceeding before a tribunal; and

16 (b)(4) each affected client gives informed consent, confirmed in writing.

17
18 Comment

19 General Principles

20 [1] Loyalty and independent judgment are essential elements in the licensed paralegal
21 practitioner's relationship to a client. Concurrent conflicts of interest can arise from the licensed
22 paralegal practitioner's responsibilities to another client, a former client or a third person or from
23 the licensed paralegal practitioner's own interests. For specific rules regarding certain concurrent
24 conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For
25 conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed
26 consent" and "confirmed in writing," see Rules 1.0(f) and (b).

27 [2] Resolution of a conflict of interest problem under this Rule requires the licensed paralegal
28 practitioner to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest
29 exists; 3) decide whether the representation may be undertaken despite the existence of a
30 conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected

31 under paragraph (a)(1) and obtain their informed consent, confirmed in writing. The clients
32 affected under paragraph (a)(1) include both of the clients referred to in paragraph (a)(1) and the
33 one or more clients whose representation might be materially limited under paragraph (a)(2).

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

41 [4] If a conflict arises after representation has been undertaken, the licensed paralegal
42 practitioner ordinarily must withdraw from the representation, unless the licensed paralegal
43 practitioner has obtained the informed consent of the client under the conditions of paragraph
44 (b). See Rule 1.16. Where more than one client is involved, whether the licensed paralegal
45 practitioner may continue to represent any of the clients is determined both by the licensed
46 paralegal practitioner's ability to comply with duties owed to the former client and by the
47 licensed paralegal practitioner's ability to represent adequately the remaining client or clients,
48 given the licensed paralegal practitioner's duties to the former client. See Rule 1.9. See also
49 Comments [5] and [29].

50 [5] Unforeseeable developments, such as changes in corporate and other organizational
51 affiliations or the addition or realignment of parties in litigation, might create conflicts in the
52 midst of a representation, as when a company sued by the licensed paralegal practitioner on
53 behalf of one client is bought by another client represented by the licensed paralegal practitioner
54 in an unrelated matter. Depending on the circumstances, the licensed paralegal practitioner may
55 have the option to withdraw from one of the representations in order to avoid the conflict. The
56 licensed paralegal practitioner must withdraw where necessary and take steps to minimize harm
57 to the clients. See Rule 1.16. The licensed paralegal practitioner must continue to protect the
58 confidences of the client from whose representation the licensed paralegal practitioner has
59 withdrawn. See Rule 1.9(c).

60 Identifying Conflicts of Interest: Directly Adverse

61 [6] Loyalty to a current client prohibits undertaking representation directly adverse to that
62 client without that client's informed consent. The client as to whom the representation is directly
63 adverse is likely to feel betrayed, and the resulting damage to the licensed paralegal practitioner-
64 client relationship is likely to impair the licensed paralegal practitioner's ability to represent the
65 client effectively. In addition, the client on whose behalf the adverse representation is undertaken
66 reasonably may fear that the licensed paralegal practitioner will pursue that client's case less
67 effectively out of deference to the other client, i.e., that the representation may be materially
68 limited by the licensed paralegal practitioner's interest in retaining the current client.

69 [7] Reserved.

70 Identifying Conflicts of Interest: Material Limitation

71 [8] Even where there is no direct adverseness, a conflict of interest exists if there is a
72 significant risk that a licensed paralegal practitioner's ability to consider, recommend or carry
73 out an appropriate course of action for the client will be materially limited as a result of the
74 licensed paralegal practitioner's other responsibilities or interests. The critical questions are the
75 likelihood that a difference in interests will eventuate and, if it does, whether it will materially
76 interfere with the licensed paralegal practitioner's independent professional judgment in
77 considering alternatives or foreclose courses of action that reasonably should be pursued on
78 behalf of the client.

79 Licensed Paralegal Practitioner's Responsibilities to Former Clients and Other Third Persons

80 [9] In addition to conflicts with other current clients, a licensed paralegal practitioner's duties
81 of loyalty and independence may be materially limited by responsibilities to former clients under
82 Rule 1.9 or by the licensed paralegal practitioner's responsibilities to other persons, such as
83 fiduciary duties arising from a licensed paralegal practitioner's service as a trustee, executor or
84 corporate director.

85 Personal Interest Conflicts

86 [10] The licensed paralegal practitioner's own interests should not be permitted to have an
87 adverse effect on representation of a client. For example, if the probity of a licensed paralegal
88 practitioner's own conduct in a transaction is in serious question, it may be difficult or
89 impossible for the licensed paralegal practitioner to give a client detached advice. Similarly,
90 when a licensed paralegal practitioner has discussions concerning possible employment with an
91 opponent of the licensed paralegal practitioner's client, or with a law firm representing the

92 opponent, such discussions could materially limit the licensed paralegal practitioner's
93 representation of the client. In addition, a licensed paralegal practitioner may not allow related
94 business interests to affect representation, for example, by referring clients to an enterprise in
95 which the licensed paralegal practitioner has an undisclosed financial interest. See Rule 1.8 for
96 specific rules pertaining to a number of personal interest conflicts, including business
97 transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily
98 are not imputed to other licensed paralegal practitioners in a law firm).

99 [11] When licensed paralegal practitioners representing different clients in the same matter or
100 in substantially related matters are closely related by blood or marriage, there may be a
101 significant risk that client confidences will be revealed and that the licensed paralegal
102 practitioner's family relationship will interfere with both loyalty and independent professional
103 judgment. As a result, each client is entitled to know of the existence and implications of the
104 relationship between the licensed paralegal practitioners before the licensed paralegal
105 practitioner agrees to undertake the representation. Thus, a licensed paralegal practitioner related
106 to another licensed paralegal practitioner, e.g., as parent, child, sibling or spouse, ordinarily may
107 not represent a client in a matter where that licensed paralegal practitioner is representing another
108 party, unless each client gives informed consent. The disqualification arising from a close family
109 relationship is personal and ordinarily is not imputed to members of firms with whom the
110 licensed paralegal practitioners are associated. See Rule 1.10.

111 [12] A licensed paralegal practitioner is prohibited from engaging in sexual relationships
112 with a client unless the sexual relationship predates the formation of the licensed paralegal
113 practitioner-client relationship. See Rule 1.8(j).

114 Interest of Person Paying for a Licensed Paralegal Practitioner's Service

115 [13] A licensed paralegal practitioner may be paid from a source other than the client,
116 including a co-client, if the client is informed of that fact and consents and the arrangement does
117 not compromise the licensed paralegal practitioner's duty of loyalty or independent judgment to
118 the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a
119 significant risk that the licensed paralegal practitioner's representation of the client will be
120 materially limited by the licensed paralegal practitioner's own interest in accommodating the
121 person paying the licensed paralegal practitioner's fee or by the licensed paralegal practitioner's
122 responsibilities to a payer who is also a co-client, then the licensed paralegal practitioner must

123 comply with the requirements of paragraph (b) before accepting the representation, including
124 determining whether the conflict is consentable and, if so, that the client has adequate
125 information about the material risks of the representation.

126 Prohibited Representations

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

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

138 [16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation
139 is prohibited by applicable law.

140 [17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional
141 interest in vigorous development of each client's position when the clients are aligned directly
142 against each other in the same litigation or other proceeding before a tribunal. Whether clients
143 are aligned directly against each other within the meaning of this paragraph requires examination
144 of the context of the proceeding. Although this paragraph does not preclude a licensed paralegal
145 practitioner's multiple representation of adverse parties to a mediation (because mediation is not
146 a proceeding before a "tribunal" under Rule 1.0(o)), such representation may be precluded by
147 paragraph (b)(1).

148 Informed Consent

149 [18] Informed consent requires that each affected client be aware of the relevant
150 circumstances and of the material and reasonably foreseeable ways that the conflict could have
151 adverse effects on the interests of that client. See Rule 1.0(f) (informed consent). The
152 information required depends on the nature of the conflict and the nature of the risks involved.
153 When representation of multiple clients in a single matter is undertaken, the information must

154 include the implications of the common representation, including possible effects on loyalty,
155 confidentiality and the licensed paralegal practitioner-client privilege and the advantages and
156 risks involved. See Comments [30] and [31] (effect of common representation on
157 confidentiality).

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

167 Consent Confirmed in Writing

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

181 Revoking Consent

182 [21] A client who has given consent to a conflict may revoke the consent and, like any other
183 client, may terminate the licensed paralegal practitioner's representation at any time. Whether
184 revoking consent to the client's own representation precludes the licensed paralegal practitioner

185 from continuing to represent other clients depends on the circumstances, including the nature of
186 the conflict, whether the client revoked consent because of a material change in circumstances,
187 the reasonable expectations of the other client and whether material detriment to the other clients
188 or the licensed paralegal practitioner would result.

189 Consent to Future Conflict

190 [22] Whether a licensed paralegal practitioner may properly request a client to waive
191 conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of
192 such waivers is generally determined by the extent to which the client reasonably understands the
193 material risks that the waiver entails. The more comprehensive the explanation of the types of
194 future representations that might arise and the actual and reasonably foreseeable adverse
195 consequences of those representations, the greater the likelihood that the client will have the
196 requisite understanding.

197 Conflicts in Litigation

198 [23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation,
199 regardless of the clients' consent. On the other hand, simultaneous representation of parties
200 whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by
201 paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties'
202 testimony, incompatibility in positions in relation to an opposing party or the fact that there are
203 substantially different possibilities of settlement of the claims or liabilities in question. Common
204 representation of persons having similar interests in civil litigation is proper if the requirements
205 of paragraph (b) are met

206 [24] Ordinarily a licensed paralegal practitioner may take inconsistent legal positions in
207 different tribunals at different times on behalf of different clients. The mere fact that advocating
208 a legal position on behalf of one client might create precedent adverse to the interests of a client
209 represented by the licensed paralegal practitioner in an unrelated matter does not create a conflict
210 of interest. A conflict of interest exists, however, if there is a significant risk that a licensed
211 paralegal practitioner's action on behalf of one client will materially limit the licensed paralegal
212 practitioner's effectiveness in representing another client in a different case; for example, when a
213 decision favoring one client will create a precedent likely to seriously weaken the position taken
214 on behalf of the other client. Factors relevant in determining whether the clients need to be
215 advised of the risk include: where the cases are pending, whether the issue is substantive or

216 procedural, the temporal relationship between the matters, the significance of the issue to the
217 immediate and long-term interests of the clients involved and the clients' reasonable expectations
218 in retaining the licensed paralegal practitioner. If there is significant risk of material limitation,
219 then absent informed consent of the affected clients, the licensed paralegal practitioner must
220 refuse one of the representations or withdraw from one or both matters.

221 [25] Reserved.

222 Non-litigation Conflicts

223 [26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than
224 litigation. Relevant factors in determining whether there is significant potential for material
225 limitation include the duration and intimacy of the licensed paralegal practitioner's relationship
226 with the client or clients involved, the functions being performed by the licensed paralegal
227 practitioner, the likelihood that disagreements will arise and the likely prejudice to the client
228 from the conflict. The question is often one of proximity and degree. See Comment [8].

229 [27] Reserved.

230 [28] Whether a conflict is consentable depends on the circumstances. For example, a licensed
231 paralegal practitioner may not represent multiple parties to a negotiation whose interests are
232 fundamentally antagonistic to each other, but common representation is permissible where the
233 clients are generally aligned in interest even though there is some difference in interest among
234 them. Thus, a licensed paralegal practitioner may seek to establish or adjust a relationship
235 between clients on an amicable and mutually advantageous basis; for example, in helping to
236 organize a business in which two or more clients are entrepreneurs, working out the financial
237 reorganization of an enterprise in which two or more clients have an interest or arranging a
238 property distribution in settlement of an estate. The licensed paralegal practitioner seeks to
239 resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each
240 party might have to obtain separate representation, with the possibility of incurring additional
241 cost, complication or even litigation. Given these and other relevant factors, the clients may
242 prefer that the licensed paralegal practitioner act for all of them.

243 Special Considerations in Common Representation

244 [29] In considering whether to represent multiple clients in the same matter, a licensed
245 paralegal practitioner should be mindful that if the common representation fails because the
246 potentially adverse interests cannot be reconciled, the result can be additional cost,

247 embarrassment and recrimination. Ordinarily, the licensed paralegal practitioner will be forced to
248 withdraw from representing all of the clients if the common representation fails. In some
249 situations, the risk of failure is so great that multiple representation is plainly impossible. For
250 example, a licensed paralegal practitioner cannot undertake common representation of clients
251 where contentious litigation or negotiations between them are imminent or contemplated.
252 Moreover, because the licensed paralegal practitioner is required to be impartial between
253 commonly represented clients, representation of multiple clients is improper when it is unlikely
254 that impartiality can be maintained. Generally, if the relationship between the parties has already
255 assumed antagonism, the possibility that the clients' interests can be adequately served by
256 common representation is not very good. Other relevant factors are whether the licensed
257 paralegal practitioner subsequently will represent both parties on a continuing basis and whether
258 the situation involves creating or terminating a relationship between the parties.

259 [30] A particularly important factor in determining the appropriateness of common
260 representation is the effect on licensed paralegal practitioner-client confidentiality and the
261 licensed paralegal practitioner-client privilege. With regard to the licensed paralegal practitioner-
262 client privilege, the prevailing rule is that, as between commonly represented clients, the
263 privilege does not attach. Hence, it must be assumed that if litigation eventuates between the
264 clients, the privilege will not protect any such communications, and the client should be so
265 advised.

266 [31] As to the duty of confidentiality, continued common representation will almost certainly
267 be inadequate if one client asks the licensed paralegal practitioner not to disclose to the other
268 client information relevant to the common representation. This is so because the licensed
269 paralegal practitioner has an equal duty of loyalty to each client, and each client has the right to
270 be informed of anything bearing on the representation that might affect that client's interests and
271 the right to expect that the licensed paralegal practitioner will use that information to that client's
272 benefit. See Rule 1.4. The licensed paralegal practitioner should, at the outset of the common
273 representation and as part of the process of obtaining each client's informed consent, advise each
274 client that information will be shared and that the licensed paralegal practitioner will have to
275 withdraw if one client decides that some matter material to the representation should be kept
276 from the other. In limited circumstances, it may be appropriate for the licensed paralegal

277 practitioner to proceed with the representation when the clients have agreed, after being properly
278 informed, that the licensed paralegal practitioner will keep certain information confidential.

279 [32] When seeking to establish or adjust a relationship between clients, the licensed paralegal
280 practitioner should make clear that the licensed paralegal practitioner's role is not that of
281 partisanship normally expected in other circumstances and, thus, that the clients may be required
282 to assume greater responsibility for decisions than when each client is separately represented.
283 Any limitations on the scope of the representation made necessary as a result of the common
284 representation should be fully explained to the clients at the outset of the representation. See
285 Rule 1.2(c).

286 [33] Subject to the above limitations, each client in the common representation has the right
287 to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a
288 former client. The client also has the right to discharge the licensed paralegal practitioner as
289 stated in Rule 1.16.

290 Organizational Clients

291 [34] A licensed paralegal practitioner who represents a corporation or other organization does
292 not, by virtue of that representation, necessarily represent any constituent or affiliated
293 organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the licensed paralegal
294 practitioner for an organization is not barred from accepting representation adverse to an affiliate
295 in an unrelated matter, unless the circumstances are such that the affiliate should also be
296 considered a client of the licensed paralegal practitioner, there is an understanding between the
297 licensed paralegal practitioner and the organizational client that the licensed paralegal
298 practitioner will avoid representation adverse to the client's affiliates, or the licensed paralegal
299 practitioner's obligations to either the organizational client or the new client are likely to limit
300 materially the licensed paralegal practitioner's representation of the other client.

301 [35] A licensed paralegal practitioner for a corporation or other organization who is also a
302 member of its board of directors should determine whether the responsibilities of the two roles
303 may conflict.

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