

Rule 1.9. Duties to Former Clients.

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

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

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

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

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

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

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

19
20 Comment

21 [1] After termination of a licensed paralegal practitioner-client relationship, a licensed
22 paralegal practitioner has certain continuing duties with respect to confidentiality and conflicts of
23 interest and thus may not represent another client except in conformity with this Rule. Under this
24 Rule, for example, a licensed paralegal practitioner who has represented multiple clients in a
25 matter could not represent one of the clients against the others in the same or a substantially
26 related matter after a dispute arose among the clients in that matter, unless all affected clients
27 give informed consent. See Comment [9]. Current and former government licensed paralegal
28 practitioners must comply with this Rule to the extent required by Rule 1.11.

29 [2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular
30 situation or transaction. The licensed paralegal practitioner's involvement in a matter can also be

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

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

58 Licensed Paralegal Practitioners Moving Between Firms

59 [4] When licensed paralegal practitioners have been associated within a firm but then end
60 their association, the question of whether a licensed paralegal practitioner should undertake
61 representation is more complicated. There are several competing considerations. First, the client

62 previously represented by the former firm must be reasonably assured that the principle of
63 loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to
64 preclude other persons from having reasonable choice of legal counsel. Third, the rule should not
65 unreasonably hamper licensed paralegal practitioners from forming new associations and taking
66 on new clients after having left a previous association. If the concept of imputation were applied
67 with unqualified rigor, the result would be radical curtailment of the opportunity of licensed
68 paralegal practitioners to move from one practice setting to another and of the opportunity of
69 clients to change counsel.

70 [5] Paragraph (b) operates to disqualify the licensed paralegal practitioner only when the
71 licensed paralegal practitioner involved has actual knowledge of information protected by Rules
72 1.6 and 1.9(c). Thus, if a licensed paralegal practitioner while with one firm acquired no
73 knowledge or information relating to a particular client of the firm, and that licensed paralegal
74 practitioner later joined another firm, neither the licensed paralegal practitioner individually nor
75 the second firm is disqualified from representing another client in the same or a related matter
76 even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a
77 firm once a licensed paralegal practitioner has terminated association with the firm.

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

89 [7] Independent of the question of disqualification of a firm, a licensed paralegal practitioner
90 changing professional association has a continuing duty to preserve confidentiality of
91 information about a client formerly represented. See Rules 1.6 and 1.9(c).

92 [8] Paragraph (c) provides that information acquired by the licensed paralegal practitioner in
93 the course of representing a client may not subsequently be used or revealed by the licensed
94 paralegal practitioner to the disadvantage of the client. However, the fact that a licensed
95 paralegal practitioner has once served a client does not preclude the licensed paralegal
96 practitioner from using generally known information about that client when later representing
97 another client.

98 [9] The provisions of this Rule are for the protection of former clients and can be waived if
99 the client gives informed consent, which consent must be confirmed in writing under paragraphs
100 (a) and (b). See Rule 1.0(b) and (f). With regard to the effectiveness of an advance waiver, see
101 Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a licensed
102 paralegal practitioner is or was formerly associated, see Rule 1.10.

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