

1 **Rule 1.7. Conflict of Interest: Current Clients.**

2 (a) Except as provided in paragraph (b), a licensed paralegal practitioner shall not represent a
3 client if the representation involves a concurrent conflict of interest. A concurrent conflict of
4 interest exists if:

5 (a)(1) The representation of one client will be directly adverse to another client; or

6 (a)(2) There is a significant risk that the representation of one or more clients will be
7 materially limited by the licensed paralegal practitioner's responsibilities to another client, a
8 former client or a third person or by a personal interest of the licensed paralegal practitioner.

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

11 (b)(1) the licensed paralegal practitioner reasonably believes that the licensed paralegal
12 practitioner will be able to provide competent and diligent representation to each affected client;

13 (b)(2) the representation is not prohibited by law;

14 (b)(3) the representation does not involve the assertion of a claim by one client against
15 another client represented by the licensed paralegal practitioner in the same litigation or other
16 proceeding before a tribunal; and

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

18

19 Comment

20 General Principles

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

28 [2] Resolution of a conflict of interest problem under this Rule requires the licensed paralegal
29 practitioner to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest

30 exists; 3) decide whether the representation may be undertaken despite the existence of a
31 conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected
32 under paragraph (a)(1) and obtain their informed consent, confirmed in writing. The clients
33 affected under paragraph (a)(1) include both of the clients referred to in paragraph (a)(1) and the
34 one or more clients whose representation might be materially limited under paragraph (a)(2).

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

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

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

59 confidences of the client from whose representation the licensed paralegal practitioner has
60 withdrawn. See Rule 1.9(c).

61 Identifying Conflicts of Interest: Directly Adverse

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

70 [7] Reserved.

71 Identifying Conflicts of Interest: Material Limitation

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

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

81

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

87 Personal Interest Conflicts

88 [10] The licensed paralegal practitioner's own interests should not be permitted to have an
89 adverse effect on representation of a client. For example, if the probity of a licensed paralegal
90 practitioner's own conduct in a transaction is in serious question, it may be difficult or
91 impossible for the licensed paralegal practitioner to give a client detached advice. Similarly,
92 when a licensed paralegal practitioner has discussions concerning possible employment with an
93 opponent of the licensed paralegal practitioner's client, or with a law firm representing the
94 opponent, such discussions could materially limit the licensed paralegal practitioner's
95 representation of the client. In addition, a licensed paralegal practitioner may not allow related
96 business interests to affect representation, for example, by referring clients to an enterprise in
97 which the licensed paralegal practitioner has an undisclosed financial interest. See Rule 1.8 for
98 specific rules pertaining to a number of personal interest conflicts, including business
99 transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily
100 are not imputed to other licensed paralegal practitioners in a law firm).

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

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

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

117

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

129 Prohibited Representations

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

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

141 [16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is
142 prohibited by applicable law.

143 [17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional
144 interest in vigorous development of each client's position when the clients are aligned directly
145 against each other in the same litigation or other proceeding before a tribunal. Whether clients

146 are aligned directly against each other within the meaning of this paragraph requires examination
147 of the context of the proceeding. Although this paragraph does not preclude a licensed paralegal
148 practitioner's multiple representation of adverse parties to a mediation (because mediation is not
149 a proceeding before a "tribunal" under Rule 1.0(o)), such representation may be precluded by
150 paragraph (b)(1).

151 Informed Consent

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

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

169 Consent Confirmed in Writing

170 [20] Paragraph (b) requires the licensed paralegal practitioner to obtain the informed consent of
171 the client, confirmed in writing. Such a writing may consist of a document executed by the client
172 or one that the licensed paralegal practitioner promptly records and transmits to the client
173 following an oral consent. See Rule 1.0(b). See also Rule 1.0(p) (writing includes electronic
174 transmission). If it is not feasible to obtain or transmit the writing at the time the client gives

175 informed consent, then the licensed paralegal practitioner must obtain or transmit it within a
176 reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the
177 need in most cases for the licensed paralegal practitioner to talk with the client, to explain the
178 risks and advantages, if any, of representation burdened with a conflict of interest, as well as
179 reasonably available alternatives, and to afford the client a reasonable opportunity to consider the
180 risks and alternatives and to raise questions and concerns. Rather, the writing is required in order
181 to impress upon clients the seriousness of the decision the client is being asked to make and to
182 avoid disputes or ambiguities that might later occur in the absence of a writing.

183 Revoking Consent

184 [21] A client who has given consent to a conflict may revoke the consent and, like any other
185 client, may terminate the licensed paralegal practitioner's representation at any time. Whether
186 revoking consent to the client's own representation precludes the licensed paralegal practitioner
187 from continuing to represent other clients depends on the circumstances, including the nature of
188 the conflict, whether the client revoked consent because of a material change in circumstances,
189 the reasonable expectations of the other client and whether material detriment to the other clients
190 or the licensed paralegal practitioner would result.

191 Consent to Future Conflict

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

199 Conflicts in Litigation

200 [23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation,
201 regardless of the clients' consent. On the other hand, simultaneous representation of parties
202 whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by
203 paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties'

204 testimony, incompatibility in positions in relation to an opposing party or the fact that there are
205 substantially different possibilities of settlement of the claims or liabilities in question. Common
206 representation of persons having similar interests in civil litigation is proper if the requirements
207 of paragraph (b) are met

208 [24] Ordinarily a licensed paralegal practitioner may take inconsistent legal positions in different
209 tribunals at different times on behalf of different clients. The mere fact that advocating a legal
210 position on behalf of one client might create precedent adverse to the interests of a client
211 represented by the licensed paralegal practitioner in an unrelated matter does not create a conflict
212 of interest. A conflict of interest exists, however, if there is a significant risk that a licensed
213 paralegal practitioner's action on behalf of one client will materially limit the licensed paralegal
214 practitioner's effectiveness in representing another client in a different case; for example, when a
215 decision favoring one client will create a precedent likely to seriously weaken the position taken
216 on behalf of the other client. Factors relevant in determining whether the clients need to be
217 advised of the risk include: where the cases are pending, whether the issue is substantive or
218 procedural, the temporal relationship between the matters, the significance of the issue to the
219 immediate and long-term interests of the clients involved and the clients' reasonable expectations
220 in retaining the licensed paralegal practitioner. If there is significant risk of material limitation,
221 then absent informed consent of the affected clients, the licensed paralegal practitioner must
222 refuse one of the representations or withdraw from one or both matters.

223 [25] Reserved.

224 Non-litigation Conflicts

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

231 [27] Reserved.

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

245 Special Considerations in Common Representation

246 [29] In considering whether to represent multiple clients in the same matter, a licensed paralegal
247 practitioner should be mindful that if the common representation fails because the potentially
248 adverse interests cannot be reconciled, the result can be additional cost, embarrassment and
249 recrimination. Ordinarily, the licensed paralegal practitioner will be forced to withdraw from
250 representing all of the clients if the common representation fails. In some situations, the risk of
251 failure is so great that multiple representation is plainly impossible. For example, a licensed
252 paralegal practitioner cannot undertake common representation of clients where contentious
253 litigation or negotiations between them are imminent or contemplated. Moreover, because the
254 licensed paralegal practitioner is required to be impartial between commonly represented clients,
255 representation of multiple clients is improper when it is unlikely that impartiality can be
256 maintained. Generally, if the relationship between the parties has already assumed antagonism,
257 the possibility that the clients' interests can be adequately served by common representation is
258 not very good. Other relevant factors are whether the licensed paralegal practitioner subsequently
259 will represent both parties on a continuing basis and whether the situation involves creating or
260 terminating a relationship between the parties.

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

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

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

288 [33] Subject to the above limitations, each client in the common representation has the right to
289 loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a

290 former client. The client also has the right to discharge the licensed paralegal practitioner as
291 stated in Rule 1.16.

292 Organizational Clients

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

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