CURRENT CLIENT CONFLICTS pdf

1: Concurrent Client Conflicts | DQed: The Lawyer Disqualification Blog

(1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

May 31, , that turns conventional wisdom upside down. In the world of conflicts of interest, these are enormous changes. This two-part article explains these changes and their background. The key New York rule governing the imputation of conflicts is DR D , which provides as follows: While lawyers are associated in a law firm, none of them shall knowingly accept or continue employment when any one of them practicing alone would be prohibited from doing so under DR A , DR A or B , DR A or B , or DR B except as otherwise provided therein. In other words, if any lawyer in the firm is disqualified due to a personal conflict of interest DR , a conflict with another current client DR , a conflict with a former client DR , or a conflict arising from former government employment DR , then no other lawyer associated with the firm may begin or continue employment in that matter. While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1. Ethics opinions have taken this position explicitly. City , for example, the Committee said: The most often cited New York State decision on this point is Nemet v. The husband moved to disqualify Brandes, and the Supreme Court granted the motion. The principle of attribution [i. Courts outside New York have generally expressed the same view. Seagate Technology, F. For example, in N. City , the Committee said: The essential facts are relatively simple. Englander was still representing Hempstead Video in that matter and was thus personally disqualified from opposing Hempstead Video. Hempstead Video may have thought it would easily win its motion to disqualify, but it was wrong. His only connection to the Jaspan firm had been to lease space from it. The case before us does not fit easily within the existing framework for analyzing conflict imputation from an attorney to his firm. If he is, a rebuttable presumption arises that the attorney and the firm share client confidences, and the court then proceeds to the second step, which involves determining whether that presumption has been rebutted. Nemet, were all distinguishable. Accordingly, the Second Circuit said: Beeman, WL N. Memorial Medical Center, Inc. Moreover, as soon as Jaspan learned of the potential conflict, it had instructed Englander not to discuss the pregnancy discrimination case with anyone at the firm and to continue maintaining a separate file on that case. At this point, the Second Circuit embarked on an alternative analysis. The edition is now available from Thomson West. This article provides general coverage of its subject area and is presented to the reader for informational purposes only with the understanding that the laws governing legal ethics and professional responsibility are always changing. The information in this article is not a substitute for legal advice and may not be suitable in a particular situation. Consult your attorney for legal advice.

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2: conflict of interest, Freivogel on Conflicts Current Client - Part I

N.Y. Op. () is a clear exposition of current client vs. former client conflicts. Daniel J. Bussel, No Conflict, 25 Geo. J. Legal Ethics () (at SSRN, to be published). Professor Bussel contends that the American current client rule should be changed in favor of a "substantial relationship" test as applied in the former client rule.

In the meantime my attention was diverted by some shiny objects of an ethical sort, but I would now like to return to an exploration of conflicts of interestâ€"this time looking in a more detailed way at current client conflicts of interest, governed by Indiana Rule of Professional Conduct 1. But first a disclaimer: Entire treatises have been written on the subject. At most, a column like this can help tune up your conflicts of interest radar. Once that radar sets off an alarm, get help from someone who really knows the subject matter. Underlying Concerns About Loyalty and Confidentiality Two important principles drive current-client conflict of interest rules. The first principle is confidentiality. Lawyers have a broad duty of confidentiality to their clientsâ€"essentially almost everything lawyers know is confidential. To avoid that, Rule 1. But it is thought that the temptation to breach confidentiality will be too great if the lawyer has another client with adverse interests who could benefit from those confidences. Moreover, it is important that clients perceive their confidences to be secure, and they may not if the lawyer also represents a client with differing interests in a related matter. The second principle is loyalty. Confidentiality could be viewed as a subset of loyalty, but loyalty entails much more. It is the loyalty principle that causes us to be concerned about current conflicts of interest arising from different client legal representations that have nothing to do with each other. Nonetheless, because clients need to have confidence and trust in their lawyers, we do not require them to accept being sued by their own lawyer, even in an unrelated matter. Must this be so? Is it impossible for a lawyer to be an effective advocate for a client if that lawyer is adverse to that client in an unrelated matter on behalf of another client? The American view of loyalty-driven conflicts of interest is not anchored in natural lawâ€"it is a product of our unique legal culture. In fact, in the United Kingdom and the EU countries, the idea that a conflict of interest would rise from unrelated, albeit adverse, legal representations. We may not be as far apart from our European sisters and brothers as it might seem at first glance. While our default position is that these are impermissible conflicts of interest, the broad availability of informed client consent often makes it possible for U. Imputation of Conflicts I will discuss imputation of conflicts of interest from one lawyer to others in the same law firm in a later column. However, much of the following discussion will seem a bit unrealistic without understanding that as a general matter, for most conflict of interest purposes, all lawyers in a law firm are treated as a single lawyer. It may seem strange to suggest that a lawyer might unknowingly sue an existing client on behalf of another client, but it is not strange at all for one lawyer to unwittingly sue the client of another lawyer in the firm if conflicts are not checked. Consentability of Conflicts Not all conflicts of interest preclude representation of a client. In fact, many, and possibly most, conflicts of interest are consentable. I reserve for a later column a more detailed analysis of client and former client consent to conflicts of interest. For now, suffice it to say that client consent is often an option for resolving conflicts of interest as an alternative to having to lose an employment opportunity. Client Identity One of the threshold issues in dealing with conflicts of interest generally and current-client conflicts of interest in particular is identifying who the clients are. Lawyers constantly find themselves in situations where multiple individuals or entities might potentially believe that the same lawyer is representing their interests. Absent an unwaived or unwaivable conflict of interest of the multiple-client variety more about that later , there is nothing to prevent a lawyer from representing multiple clients simultaneously in the same matterâ€"it happens frequently. It can arise in many guises: An engagement letter is the best place to clearly sort out client identity. It is the earliest and best opportunity for the lawyer to clarify who is and who is not a client. Another issue that arises with some frequency in connection with determining client identity is whether the lawyer for a legal entity or another organization represents constituents of the organization in addition to the organization itself, including affiliated organizations, such as parents, subsidiaries or other corporate family members. Ordinarily, representing an entity does not, without more, create an attorney-client relationship with other associated or

affiliated individuals or organizations. This is inevitably an area where client and lawyer expectations might, unless clarified, differ. If a corporate parent believes that its representation includes representation of the entire corporate family, it is far better to know that at the outset of the representation rather than later when a new engagement arises that would be adverse to an affiliate. Direct Adversity Conflicts I refer you to my earlier column for an overview of the types of current-client conflicts. It is important to keep in mind that, especially in the case of material limitation conflicts, it is not only other client interests that will raise conflict concerns. Direct adversity conflicts are usually easy to spot if you take the trouble to look for themâ€”as you must. At the outset of any representation, a lawyer must check conflicts by querying a database or list of current and former clients and current and former adverse parties by asking whether the prospective client in the new matter is now or has ever been an adverse party and by asking whether any adverse party in the prospective new matter is now or has ever been a client. If that database query returns a hit that either the client in the prospective new matter is an adverse party in some other matter or that any adverse party in the prospective new matter is an existing client in some other matter, a direct adversity conflict of interest is presented. Direct adversity conflicts can arise in any number of waysâ€”most frequently when an existing client asks a lawyer to take on a new matter adverse to a person or entity that happens to also be a client in an unrelated matter. The client to whom the new matter will be adverse will be able to assert a direct adversity conflict: Even though one client is willing to consent to being sued by her lawyer more likely by another lawyer in the same firm , that is not the end of the inquiry. From the vantage point of the client in the new matter, there is a material limitation conflict. Material Limitation Conflicts Material limitation conflicts are also generally easy to spot, but often difficult to analyze. The typical potential material limitation conflict is presented when more than one client would like to be represented by the same lawyer. The interests of multiple clients are often perfectly or closely aligned and the prospect of a conflict of interest manifesting itself is remote. At other times, it should be readily apparent that the interests of different clients are likely to diverge. Clients are not always in the best position to distinguish one from the other. It is human nature for people who are interested in creating an enterprise together to myopically focus on commonalities, not differences. Moreover, the use of multiple lawyers might be seen as a way of over-emphasizing differences. The would-be shared lawyer is in the delicate position of having to determine whether commonalities sufficiently outweigh differences to the point where a single lawyer can act on behalf of the entire group. There is often no easy answer. Lawyers need to be ruthlessly objective in deciding whether they can competently and diligently serve more than one master. Where it is clear that the lawyer cannot, he must turn down the engagement or limit his representation to a single client or a more closely aligned subset of the entire group. Other times, the alignment of interests is close to perfect, in which event the lawyer is free to undertake the multiple client representation. Prudence dictates that even in these cases, there be disclosures and informed client consent. Most often the situation is not clear one way or the other: When a conflict of client interest later manifests itself, the lawyer will the required to withdraw from the representationâ€”probably on behalf of everyone unless some form of consent allows the lawyer to stay in on behalf of a subset of the original client group. In every multiple-client situation, the lawyer should and usually must provide the clients a clear warning at the outset of the representation that a conflict of interest might later emerge, offer the option to the clients to have their own separate counsel, and secure the consent of each client if the shared representation is to go forward. One piece of information that prospective multiple clients need to know is how confidential information will be handled. The clients need to know before agreeing to the shared representation that information from one client will be disclosed to, or at least accessible by, all of the clients. It is close-to impossible for multiple clients to consent to the non-disclosure of information among the several clients, because any such agreement is likely to so hamper the lawyer as to preclude him from being able to competently and diligently represent each of the clients. For this reason, any client consent to shared representation should inform the clients that one of the implications of a shared representation will be that information from one client will be accessible by all. Non-Client Material Limitation Conflicts While a client-focused view is the most logical lens through which to view current-client conflicts of interest, we should not lose track of the many ways in which the personal interests of lawyers or the interests of non-client third parties can create material limitation conflicts. The inquiry is always going to

be whether non-client interests present a significant risk of materially limiting the representation of the client. Third party interests that are capable of creating conflicts of interest are usually those of former clients. This is the flip side of former client conflicts of interest that will be discussed in a future column. If a lawyer has represented a former client in a substantially related matter, that former client is free to consent to her former lawyer now being adverse. So far, so good. There is a species of current client conflict that lawyers cannot anticipate. They typically arise when there has been a reconfiguration in the parties to a dispute that causes adversity when there previously was none. Here is one example: The lawyer also represents Client C, an unrelated client in unrelated matters. There is often greater flexibility in dealing with thrust upon conflicts than would ordinarily be the case. The lawyer may be able to avoid disqualification from representing Client A at the behest of Client C because there was nothing the lawyer could have done to anticipate and avoid the conflict of interest. Avoiding disqualification might require the lawyer for Client A being screened from the lawyer for Client C. While Client C may not be able to force a disqualification, there will be nothing to prevent Client C from expressing its displeasure by taking its legal business elsewhere. And remember, even if Client C remains a client of the law firm, the lawyer must make sure Client A is okay being represented by a lawyer whose firm represents Client C in unrelated matters. It works this way: Suppose a lawyer represents Client A in a matter of modest significance and fee. Prospective Client B approaches the lawyer about suing Client A in an unrelated matterâ€”a significant and potentially lucrative matter. Without client consent, the lawyer could not sue current Client A on behalf of Client B. Ah, but what if the lawyer terminated the representation of Client A thereby making Client A a former client? Client A, now a former client, may be sued in a substantially unrelated matter. The Hot Potato Doctrine will view this as an act of disloyalty to Client A and treat Client A as though it were still a current client for conflict of interest purposes and the lawyer may not sue Client A on behalf of Client B. The Hot Potato Doctrine is a case-law gloss on the Rules of Professional Conduct and cannot be found in the rules themselves. This will not always present a conflict of interest, but it can if the continuing representation of the client will be materially limited by the fact that the lawyer committed the error. Prior work conflicts are difficult to self-diagnose. The lawyer thinks that he is helping the client solve a problem. Positional Conflicts Another branch of current conflicts of interest deals with taking conflicting positions on a legal question on behalf of unrelated clients. Ordinarily this will not create a conflict of interest. The most obvious example is when the same lawyer has two cases in the same tribunal especially on appeal and is arguing different sides of the same legal question in the two cases. Positional conflicts of interest are notoriously difficult to spot because conflicts checking systems are geared to identify parties, not issues, in conflict. For this reason, it is imperative that there be good communications within law firms or practice-area departments about the cases that are active at any given time. It is the only real way to catch a positional conflict before it becomes an embarrassment to the firm.

CURRENT CLIENT CONFLICTS pdf

3: Conflict of Interest: Current Clients | North Carolina State Bar

The Canadian law governing conflicts of interest between current clients of the lawyer.

A concurrent conflict of interest exists if: For specific Rules regarding certain concurrent conflicts of interest, see Rule 1. For former client conflicts of interest, see Rule 1. For conflicts of interest involving prospective clients, see Rule 1. For definitions of "informed consent" and "confirmed in writing," see Rule 1. The clients affected under paragraph a include both of the clients referred to in paragraph a 1 and the one or more clients whose representation might be materially limited under paragraph a 2. To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1. See also Comments [5] and [29]. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See also Washington Comment [36]. Identifying Conflicts of Interest: Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. See also Washington Comment [37]. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See also Rule 1. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer so related to another lawyer ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from such relationships is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. Prohibited Representations [14] Ordinarily, clients may consent to representation notwithstanding a conflict. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client. Thus, under paragraph b 1 , representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states other than Washington limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest. See Washington Comment [38]. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Informed Consent [18] [Washington revision] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. The information required depends on the nature of the conflict and the nature of the risks involved. When representation of

multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] effect of common representation on confidentiality. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. See also Washington Comment [39]. Consent Confirmed in Writing [20] [Washington revision] Paragraph b requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing. Consent to Future Conflict [22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph b. The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph b. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph a 2. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph b are met. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. Factors relevant in determining whether the clients need to be advised of the risk include: If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter. Nonlitigation Conflicts [26] Conflicts of interest under paragraphs a 1 and a 2 arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. The question is often one of proximity and degree. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust,

including its beneficiaries. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them. See also Washington Comment [40]. Special Considerations in Common Representation [29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. The client also has the right to discharge the lawyer as stated in Rule 1. See also Washington Comment [41]. Organizational Clients [34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Additional Washington Comments 36 - 41 General Principles [36] Notwithstanding Comment [3], lawyers providing short-term limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or court are not normally required to systematically screen for conflicts of interest before undertaking a representation. See Comment [1] to Rule 6. Material Limitation [37] Use of the term "significant risk" in paragraph a 2 is not intended to be a substantive change or diminishment in the standard required under former Washington RPC 1. Informed Consent [39] Paragraph b 4 of the Rule differs slightly from the Model Rule in that it expressly requires authorization from the other client before any required disclosure of information relating to that client can be made. Nonlitigation Conflicts [40] Under Washington case law, in estate administration matters the client is the personal representative of the estate. Special Considerations in Common Representation [41] Various legal provisions, including constitutional, statutory and common law, may define the duties of government lawyers in representing public officers, employees, and agencies and should be considered in evaluating the nature and propriety of common representation.

CURRENT CLIENT CONFLICTS pdf

4: Conflict Of Interest: Current Clients: Specific Rules | North Carolina State Bar

Concurrent Client Conflicts October 19, One of the starkest bases for disqualification arises when the interests of one current client conflict with the interests of another current client. [1].

Mihm, discussing the current law of conflicts of interest as it applies to Colorado lawyers. Lawyers often encounter potential conflicts of interest with former clients. Comment [1] to Colo. The Comment states, by way of example: Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. The Restatement also relies on the substantial relationship test: The current matter is substantially related to the earlier matter if: The Colorado courts have mostly addressed the substantial relationship test in the context of motions to disqualify. The party seeking disqualification under Colo. In Crystal Homes v. Whether a lawyer properly may do so depends upon the nature and extent of the former legal work performed for the previous client, as well as the possible relationship between the two transactions. In Frisco, the criminal defense lawyer had represented the prosecution witness, Mangeris, against charges of manufacturing and conspiring with a third person over a three-day period to manufacture and distribute methamphetamine. When Mangeris failed to appear at a hearing, his bond was revoked and he was arrested. At that point, other defense counsel began representing Mangeris and the first lawyer withdrew. As part of a broader plea agreement, the drug charges on which the lawyer had represented Mangeris were dismissed, and Mangeris became a prosecution witness. As part of his grand jury testimony, Mangeris testified against Frisco about crimes unrelated to the charges against Mangeris, but also involving the distribution of methamphetamine. A grand jury indicted Frisco on numerous charges. The district court agreed, ruling only that Colo. Frisco filed a C. In reversing the decision of the district court, the supreme court made the rule absolute. The court discussed what the trial court must consider in analyzing whether two matters are substantially related: Its prohibition is therefore limited to representations that combine the same or substantially related legal disputes with a motive to harm a former client, in order to advance the interests of a current client. Restatement of the Law Governing Lawyers, 10 Geo. Legal Ethics Summer It necessarily entails some consideration of the likelihood that the attorney would have been exposed to confidential client information relevant to the prior matter, as well as the likelihood that such confidential material will be relevant to the later representation. Unless both cases involve an identical legal dispute or the same factual events, making it obvious that matters relevant to both would normally have been discussed in the earlier representation, evaluating the relationship between the representations will therefore generally require some factual inquiry and the identification of confidential factual information that would normally be obtained in the former representation and disadvantage the former client in the current representation. Current clients are protected from conflicts of interest by other provisions of the rules. General Rule and 1. And courts clearly have the responsibility to ensure that a criminal defendant receives a fair trial even where that requires disqualification of his counsel of choice , as well as the latitude to ensure the integrity, and appearance of integrity, of the process. With regard to Rule 1. The sweeping disqualification remedy of C. More recently, in People v. The court focused the heart of its analysis on whether, for purposes of Colo. Thus, in the criminal case, to the extent the petitioner attempted to shift blame from himself to the company, he would be pointing the finger at himself and he had no motive to do so. Moreover, even if the petitioner attempted to shift the blame, the problem could be resolved by severing the trials of the petitioner and the company.

5: Conflicts With Former Clients - OGBORN MIHM LLP

[current] client if there is any doubt whether or not the lawyer-client relationship exists with the person."Ftn 5 This remains sound advice. [1] The general rule, subject to several exceptions, is that conflicts are imputed to all lawyers within a law firm.

Only the local involved. City of Walterboro Police Dept. The court applied Rule 1. The movant had waited years to make the motion. While the decision was based largely on a waiver by passage of time, the court made this interesting statement as to whether the client was current or former: None of these acts indicated a continuing legal representation, but rather they were ministerial tasks performed to update the completed estate planning documents. This suit involves allegations of mismanagement of two Hunt family trusts. This decision is very fact intensive and, as far as we can tell, has no precedential value. But, it is interesting. The court did not discuss the fact that Texas is the only state whose version of Model Rule 1. That distinction would not have changed the result in this case because the court held that the matters in question were related. Husband and Wife met with Lawyer to discuss a divorce. Wife never signed the petition, and it was never filed. Husband then hired another lawyer who filed a petition for Husband this case. Before trial of this case Lawyer appeared for Husband. Wife moved to disqualify Lawyer, which the trial court denied. In this opinion the appellate court affirmed. The court said that the result would be the same whether Rule 1. After default judgment, and during pendency of an appeal of the default, Debtor sued Lawyer for malpractice, and Lawyer counterclaimed for fees. In this opinion the appellate court held that Lawyer had a serious conflict and should not be allowed to substitute. Plaintiff sued the general manager "Manager" of the property and several companies associated with manufacturing and selling the door. The defendants included Overhead Door, which had installed the door. Manager filed a cross-claim against Overhead Door. The trial court denied the motion. In this opinion, the appellate court reversed. The court spent some time on what is direct adversity. It also said that the fact that different lawyers at Law Firm worked on the two matters would not affect the outcome, noting that screens only work in the context of former clients. Waiver as to Unrelated Matter; Standing. The plaintiff sued two individuals and two companies. Two other defendants moved to disqualify Lawyer. In this opinion the court denied the motion because Agins and the plaintiff had waived the conflict, and because the moving defendants did not have standing to make the motion. Owning and Representing Competing Business. Lawyer represented Company B and ultimately became sole owner of Company B. Lawyer never disclosed his interest in Company B to the owner of Company A. What Lawyer did was directly adverse to his client, Company A. Lawyer was suspended for 18 months. City of Colorado Springs, U. During a hearing on the motion an expert witness for the plaintiff testified that the law firm should not be permitted to withdraw because there was a "genuine dispute" between the plaintiff and her law firm over the propriety of the fees it was charging. After that testimony the law firm amended its motion to withdraw claiming that the negative testimony by the expert created a conflict between the plaintiff and her law firm. In this opinion the court denied the motion to withdraw, saying, in part, that a fee dispute does not automatically constitute a conflict of interest. Plaintiff sued the defendants and their lawyer "Lawyer" for fraud and related causes of action. Lawyer appeared for all defendants, including himself. Plaintiff moved to disqualify Lawyer because he should be a witness. The court denied the motion without prejudice because it was not yet clear whether Lawyer should be a witness. An employee at a filling station "Employee" , at about the time he was getting off work, was horsing around with a rifle owned by the filling station. The rifle accidentally discharged injuring a friend of Employee "Friend". Friend sued the filling station and several individuals, including Employee, in state court. The plaintiff in this case "EMC" issued an insurance policy covering the filling station for liability. EMC is seeking in this case a declaration that its policy does not cover the shooting accident. The law firm representing EMC in this case "Law Firm" also represents the filling station and individual defendants in the state court case. However, EMC retained a different law firm to represent Employee in the state court case. Employee moved to disqualify Law Firm in this case. In this opinion the court denied the motion, finding no conflict of interest. Merck Eprova AG v. For a time Law Firm was representing Merck as co-counsel in a

patent prosecution while representing Pro Thera in this case. The prosecution matter involved some of the same chemicals that are involved in this case. Those relationships caused Merck to file a disqualification motion against Law Firm in this case. The motion was filed after Merck had changed counsel in the prosecution matter. In this opinion the magistrate judge granted the motion. The judge treated the conflict as a current-client conflict, following those decisions that said that the situation had to be judged as of the time of the conflict, rather than at the time the motion was filed. Court enforces current client rule under California Rule C. Law Firm represents the plaintiff in this matter. Intervenor, not a party to this case, has moved to disqualify Law Firm because Law Firm represents Intervenor in another matter not related to this case. In this opinion the district judge has affirmed the order of the magistrate judge denying the motion. In a current client situation the trial court denied a motion to disqualify because the conflict was not "material. This is an action by a beneficiary of a trust to remove the trustee. Law Firm represented Plaintiff. The senior partner and Plaintiff became friends, but, evidently, the senior partner while on the board of the Golf Club was not privy to any of the facts relevant to this case. The senior partner turned this case over to another partner to handle. Golf Club moved to disqualify Law Firm. In this opinion the magistrate judge denied the motion. First, she found no current-client or former-client conflict because neither the senior partner nor Law Firm had ever represented Golf Club. Second, she found that under Rule 1. Last, the judge found that Law Firm was not in violation of the lawyer-as-witness rule. The court also found that a four-year delay in bringing the motion was grounds, alone, to deny the motion. In re Savin, Minn. In this one-page opinion, containing no background, the court publicly reprimanded Lawyer for having a "1. This is a crude attempt to summarize the allegations. Lawyer represented a business person in setting up a joint venture to develop real estate. This would be the same real estate the county planned to use for a baseball stadium. In Law Firm and a state agency "Agency" entered into a written retainer agreement. Among other things, the agreement provided that Law Firm would have to give Agency thirty days written notice if it intended to terminate the relationship. Law Firm did three hours work for the Agency during and did no work for Agency after that. Law Firm never gave Agency written notice of termination. In Law Firm appeared for the defendant in this case adverse to Agency. Agency moved to disqualify Law Firm, and in this opinion the court granted the motion. Basically, the court said that the absence of written notice of termination meant that Agency was a current client of Law Firm. The court further said that written contracts between lawyers and clients should be "read expansively and not parsed to favor the lawyer. Elmont Union Free School Dist. This is an employment-related action against a school board and several of its administrators. For this reason the defendants moved to disqualify Law Firm. In this opinion the court granted the motion. First, the court held that there was a conflict under N. Second, although Law Firm screened the board member from this case, the court held that Law Firm was too small for the screen to be trusted. Although the board had initially approved of the board member joining Law Firm, the court held that there should have been a written waiver. The court also expressed doubts about whether the conflict was waivable. The court also discussed N. Last, the court found an "appearance of impropriety. State of New York, U.

CURRENT CLIENT CONFLICTS pdf

6: conflict of interest, Freivogel on Conflicts Current Client - Part II

Current client conflicts are addressed in the Code of Conduct, Rule A lawyer must not represent one client whose legal interests are directly adverse to the immediate legal interests of another client, even if the matters are unrelated, unless both clients consent.

This article discusses the conflicts that can arise in patent practice when a law firm represents competitors in the same industry. The article breaks no new ground, but if your law firm has recently started a patent practice, or is rapidly expanding an existing patent practice, this article should serve as a brief primer. If your law firm has an established patent practice, it will serve as a basic review. What are the potential conflicts, and what can you do about them? Representing Competitors Is Ordinarily Permitted Initially, let me be clear that representing competitors in the same industry does not, by itself, create improper conflicts. In the fierce competition between two aggressive and creative enterprises, ethically troubling conflicts may arise at any time. For example, when you begin the dual representations, PharMiracle may be concentrating its research entirely on blood pressure controls such as ace inhibitors , while Theramax concentrates only on painkillers. But PharMiracle may one day discover that its best-selling ace inhibitor is also an effective painkiller. If PharMiracle asks you to apply for a new patent to protect its claims to the product as a painkiller, what will you do? Assuming, however, that your firm has thought long and hard about the potential for such conflicts and has decided to represent both PharMiracle and Theramax, your representation of the competitors will not create a conflict requiring client consent unless your representation of one client will be closely related to your work for the other client. If each client seeks an exclusive license, so that victory for one client would spell defeat for the other client, then the conflict is so severe that it is nonwaivable. Your firm definitely cannot represent both of them, because a per se rule prohibits the same law firm from representing both sides in litigation. One firm cannot represent both sides in litigation, period. Under DR C , a lawyer may represent multiple clients whose interests conflict only if: Your law firm may have the most trustworthy litigators in the universe, but the ethics rules govern all lawyers, and there are no exemptions for honest or morally superior lawyers. The second question concerns the nature of the lawsuit. Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation. The essential question is: If so, the conflict may well be non-consentable. Prosecuting Patents for Competitors Perhaps the most difficult type of conflict in patent practice arises when a law firm simultaneously prosecutes patents on behalf of two competitors. The complexity and danger lie in the tension between the duty of confidentiality to the clients and the duty of candor to the Patent and Trademark Office PTO. Suppose PharMiracle is developing the Next Big Thing, a drug that enables people to perform at peak levels without sleep for days at a time. You are retained to help PharMiracle strategize about the patent application for this drug. At the same time, Theramax wants your firm to help it prosecute a patent for a new drug that will enable people to get by on half of their normal sleep each night â€" not exactly the same drug, but pretty closely related in its impact. May the law firm nevertheless represent both clients in prosecuting their patents? This is a broad duty, and applies not only to the client applying for the patent but also to any lawyer actively working on the patent application who has actual knowledge of the material information. The dilemma is stark. Which rule takes precedence â€" the PTO rule mandating disclosure or the legal ethics rules mandating secrecy? The issue was relatively straightforward. Molins sued Textron for patent infringement. Textron filed a counterclaim alleging that the Molins patents were unenforceable because Molins had engaged in inequitable conduct when applying for the patents. The district court sided with Textron. It ruled that the undisclosed prior art was material and that the Molins patents were unenforceable. Molins appealed to the Federal Circuit, which split three ways. The majority opinion in the Federal Circuit in Molins avoided ruling on the ethical dilemma. Citing the ethical rules governing lawyer confidentiality, Judge Newman wrote: Indeed, his obligation to preserve the confidentiality of his client Lemelson was absolute. Ethics required him

to withdraw. Prosecuting related patents for competitors thus poses substantial risks. But if a lawyer does disclose confidential information that the lawyer learned from Theramax, then Theramax may sue the lawyer for a breach of fiduciary duty. A firm might try to divide its lawyers into two or more patent prosecution teams divided by an impermeable Chinese Wall, but that may be impracticable as a business matter and ineffective as a legal matter. And although more than seven years have passed since the three-way decision in Molins, the tension between PTO rules mandating disclosure and legal ethics rules mandating confidentiality has not been squarely resolved. Accordingly, the best course is for lawyers to avoid opposing another current client in litigation and to avoid prosecuting competing patents for current clients. Lawyers who ignore this advice may end up on the wrong end of disciplinary complaints, PTO sanctions, or lawsuits by angry clients. This article provides general coverage of its subject area and is presented to the reader for informational purposes only with the understanding that the laws governing legal ethics and professional responsibility are always changing. The information in this article is not a substitute for legal advice and may not be suitable in a particular situation. Consult your attorney for legal advice.

CURRENT CLIENT CONFLICTS pdf

7: Welcome to the Oregon State Bar Online

1 Rule Conflict of Interest: Current Clients (Rule Approved by the Supreme Court, Effective November 1,) (a) A lawyer shall not, without informed written consent from each client and.*

Search Rules Rule 1. Current Clients a Except as provided in paragraph b , a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: For specific Rules regarding certain concurrent conflicts of interest, see Rule 1. For former client conflicts of interest, see Rule 1. For conflicts of interest involving prospective clients, see Rule 1. For definitions of "informed consent" and "confirmed in writing," see Rule 1. The clients affected under paragraph a include both of the clients referred to in paragraph a 1 and the one or more clients whose representation might be materially limited under paragraph a 2. To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1. See also Comments [5] and [29] to this Rule. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The withdrawing lawyer must seek court approval where necessary and take steps to minimize harm to the clients. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. Identifying Conflicts of Interest: Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself preclude the representation or require disclosure and consent. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See also Rule 1. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. Prohibited Representations [14] Ordinarily, clients may consent to representation notwithstanding a conflict. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client. Thus, under paragraph b 1 , representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Informed Consent [18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. The information required depends on the nature of the conflict and the nature of

the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] effect of common representation on confidentiality. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. Consent Confirmed in Writing [20] Paragraph b requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing. Consent to Future Conflict [22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph b. The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph b. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph a 2. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph b are met. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. Factors relevant in determining whether the clients need to be advised of the risk include: If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter. Nonlitigation Conflicts [26] Conflicts of interest under paragraphs a 1 and a 2 arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. The question is often one of proximity and degree. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust,

including its beneficiaries. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them. Special Considerations in Common Representation [29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. The client also has the right to discharge the lawyer as stated in Rule 1. Organizational Clients [34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. The lawyer may be called on to advise the corporation in matters involving actions of the directors. July 24, Amendments Approved by the Supreme Court: March 1, Ethics Opinion Notes I. An attorney may not give a title opinion to an individual and then represent another person in a boundary dispute against that individual. Once it is determined that attorneys from same firm have undertaken to represent adverse parties, one must withdraw and the other may continue only with the consent of all involved. An attorney cannot defend an action brought by a former client when confidential information obtained during the prior representation would be relevant to the defense of the current action. A part-time county attorney may not serve as guardian ad litem if official duties include advising Department of Social Services. An attorney may not represent a municipality and a distributee of an estate suing the municipality. An attorney may not serve as receiver and as attorney for a judgment creditor. An attorney who owns an insurance agency may not represent claimants against persons insured by companies his agency represents. An attorney who is employed by an insurer to defend its insureds on a regular basis represents the insurer and the insureds and, if a conflict develops between the insurer and an insured, the attorney has a duty to advise the insured to seek independent counsel. The attorney may represent a plaintiff against the insurer, but he or she should notify the insurer and have the informed consent of plaintiff. An attorney may participate in a mediation service with marriage counselors but should not later represent either party in domestic litigation. An attorney appointed to represent a state official or agency may not represent other clients in a suit against the same official or agency, another official or agency under the jurisdiction of that same official or agency or another official or agency with authority over the official or agency. Nor should an attorney represent one official or agency while representing other clients against another official or agency if both of the officials or agencies are under the jurisdiction of the same official or agency. An attorney may

not act as a friend and attempt to mediate a domestic problem and later represent the wife in domestic litigation. An attorney may not represent the administratrix officially and personally where her interests in the two roles are in conflict without the consent of the heirs.

8: Current-Client Conflicts of Interest, Vol. 55, No. 8 RES GESTAE 27 (April) - Lundberg Law

While a client-focused view is the most logical lens through which to view current-client conflicts of interest, we should not lose track of the many ways in which the personal interests of lawyers or the interests of non-client third parties can create material limitation conflicts.

For purposes of this paragraph, related persons include spouse, child, grandchild, parent, grandparent or other relative or individual with who the lawyer or the client maintains a close, familial relationship. The requirements of paragraph a must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph a are unnecessary and impracticable. Paragraph a 2 requires that the client also be advised, in writing, of the desirability of seeking the advice of an independent lawyer. It also requires that the client be given a reasonable opportunity to obtain such advice. The fact that the client was independently represented by a lawyer in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph a 1 further requires. Paragraph b applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. Paragraph b prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. Gifts to Lawyers [6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph c does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. The sole exception to this Rule is where the client is a relative of the donee. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1. Literary Rights [9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Financial Assistance [10] [Washington revision] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. See Washington Comment [21]. The third person might be a relative or friend, an indemnitor such as a liability insurance company or a co-client such as a corporation sued along with one or more of its employees. See also Rule 5. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule. The lawyer must also conform to the requirements of Rule 1. Aggregate Settlements [13] [Washington revision] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. In addition, Rule 1. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1. Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure

adequate protection of the entire class. Also, many clients are unable to evaluate the esirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1. Nevertheless, in view of the danger that a lawyer will take unfair advantage of client or former client not represented by a lawyer, the lawyer must first advise such a person in writing of the appropriateness of independent representation by a lawyer in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult an independent lawyer. Like paragraph e , the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph e. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. Contracts for contingent fees in civil cases are governed by Rule 1. Client-Lawyer Sexual Relationships [17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. See Comment [1] to Rule 1. See also Washington Comments [22] and [23]. Imputation of Prohibitions [20] Under paragraph k , a prohibition on conduct by an individual lawyer in paragraphs a through i also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph a , even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph j is personal and is not applied to associated lawyers. Paragraph e is based on former Washington RPC 1. The minor structural modifications to the general prohibition on providing financial assistance to a client do not represent a change in Washington law, and paragraph e is intended to preserve prior interpretations of the Rule and prior Washington practice. Comment [19] to Model Rule 1. Personal Relationships [24] Model Rule 1. Paragraph l is a revised version of former Washington RPC 1. See also Comment [11] to Rule 1. Indigent Defense Contracts [25] Model Rule 1. Paragraph m specifies that it is a conflict of interest for a lawyer to enter into or accept compensation under an indigent defense contract that does not provide for the payment of funds, outside of the contract, to compensate conflict counsel for fees and expenses. This right is affected in some Washington counties and municipalities through indigent defense contracts, i. When a lawyer or law firm providing indigent defense services determines that a disqualifying conflict of interest precludes representation of a particular client, the lawyer or law firm must withdraw and substitute counsel must be obtained for the client. In these circumstances, substitute counsel is typically known as "conflict counsel. For this reason, such contracts involve an inherent conflict between the interests of the client and the personal interests of the lawyer. These dangers warrant a prohibition on making such an agreement or accepting compensation for the delivery of indigent defense services from a lawyer that has done so. Paragraph m 1 ii prohibits agreements that do not provide that such services are to be funded separately from the amounts designated as compensation to the contracting lawyer or law firm. See also Comments [11] - [12]. These prohibitions do not apply to any lawyers

in a firm unless the conduct is also prohibited to a lawyer under this Rule.

CURRENT CLIENT CONFLICTS pdf

9: Small Firm Practice: Current Client Conflicts

Current clients are protected from conflicts of interest by other provisions of the rules. See, e.g., C.R.P.C. (Conflict of Interest: General Rule) and (Conflict of Interest: Prohibited Transactions).

Search Rules Rule 1. Specific Rules a A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest directly adverse to a client unless: For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship. While lawyers are associated in a firm, a prohibition in the foregoing paragraphs a through i , that applies to any one of them shall apply to all of them. The requirements of paragraph a must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph a are unnecessary and impracticable. Paragraph a 2 requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph a 1 further requires. Paragraph b applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. Paragraph b prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. Gifts to Lawyers [6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph c does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. The sole exception to this Rule is where the client is a relative of the donee. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1. Literary Rights [9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Financial Assistance [10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted. The third person might be a relative or friend, an indemnitor such as a liability insurance company or a co-client such as a corporation sued along with one or more of its employees. See also Rule 5. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule. The lawyer must also conform to the requirements of Rule 1. Aggregate Settlements [13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. In addition, Rule 1. The rule stated in this paragraph is a corollary of both these

Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel. Acquiring Proprietary Interest in Litigation [16] Paragraph i states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph e , the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. Prior to initiating a foreclosure on property subject to a lien securing a legal fee, the lawyer must notify the client of the right to require the lawyer to participate in the mandatory fee dispute resolution program. The exception for certain advances of the costs of litigation is set forth in paragraph e. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. Contracts for contingent fees in civil cases are governed by Rule 1. Imputation of Prohibitions [18] Under paragraph j , a prohibition on conduct by an individual lawyer in paragraphs a through i also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph a , even if the first lawyer is not personally involved in the representation of the client. July 24, Amendments Approved by the Supreme Court: An attorney may contract to receive an interest in real property as a contingent fee for legal representation in an action to clear title to the subject property. It is not improper for a legal aid society to request clients to donate unused trust funds to the society. But see Rule 1. An attorney who has procured a judgment for a client that has not been collected by the ninth year may purchase the judgment if the client does wish to renew it, but this practice is not encouraged. An attorney may represent a defendant employee of a city and accept payment of his fee from the city even though the employee may cross-claim against city. Opinion rules that when married lawyers are employed in different firms and those firms represent adverse parties, neither firm is disqualified. Opinion rules that a lawyer may not lend money to a client who is represented in pending or contemplated litigation except to finance costs of litigation. Opinion rules that an attorney may not condition settlement of a civil dispute on an agreement not to report lawyer misconduct. Opinion rules that a lawyer may not agree to bear the costs of federal class action litigation. Opinion rules that a lawyer who represents a client on a criminal charge may not lend the client the money necessary to post bond. Opinion rules that a lawyer may participate in the solicitation of funds from third parties to pay the legal fees of a client provided there is disclosure to contributors and the funds are administered honestly. Opinion prohibits a lawyer from advancing the cost of a rental car to a client even though the car will be used, on occasion, to transport the client to medical examinations. Opinion rules that, although a lawyer may recommend the purchase of a financial

product to a legal client, the lawyer may not receive a commission for its sale. Opinion rules that a lawyer may not prepare a power of attorney for the benefit of the principal at the request of another individual or third-party payer without consulting with, exercising independent professional judgment on behalf of, and obtaining consent from the principal. Opinion rules that, outside of the commercial or business context, a lawyer may not, at the request of a third party, prepare documents, such as a will or trust instrument, that purport to speak solely for principal without consulting with, exercising independent professional judgment on behalf of, and obtaining consent from the principal. Opinion explores the circumstances under which a lawyer may obtain litigation funding from a financing company. Opinion rules that a lawyer may receive a fee or commission in exchange for providing financial services and products to a legal client so long as the lawyer complies with the ethical rules pertaining to the provision of law-related services, business transactions with clients, and conflicts of interest. Opinion rules that a lawyer who handles adoptions as part of her or his law practice and also owns a financial interest in a for-profit adoption agency may, with informed consent, represent an adopting couple utilizing the services of the adoption agency but may not represent the biological parents. Opinion rules that a lawyer may not offer a computer tablet to a prospective client in a direct mail solicitation letter. Search Rules Alternatively you may search by keyword:

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