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Rules of Professional Conduct: Rule 1.7--Conflict of Interest: General Rule

(a) A lawyer shall not advance two or more adverse positions in the same matter.

(b) Except as permitted by paragraph (c) below, a lawyer shall not represent a client with respect to a matter if:

(1) That matter involves a specific party or parties and a position to be taken by that client in that matter is adverse to a position taken or to be taken by another client in the same matter even though that client is unrepresented or represented by a different lawyer;

(2) Such representation will be or is likely to be adversely affected by representation of another client;

(3) Representation of another client will be or is likely to be adversely affected by such representation;

(4) The lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests.

(c) A lawyer may represent a client with respect to a matter in the circumstances described in paragraph (b) above if

(1) Each potentially affected client provides informed consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation; and

(2) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.

(d) If a conflict not reasonably foreseeable at the outset of representation arises under paragraph (b)(1) after the representation commences, and is not waived under paragraph (c), a lawyer need not withdraw from any representation unless the conflict also arises under paragraphs (b)(2), (b)(3), or (b)(4).

Comment

[1] Rule 1.7 is intended to provide clear notice of circumstances that may constitute a conflict of interest. Rule 1.7(a) sets out the limited circumstances in which representation of conflicting interests is absolutely prohibited even with the informed consent of all involved clients. Rule 1.7(b) sets out those circumstances in which representation is barred in the absence of informed client consent. For the definition of "informed consent," *see* Rule 1.0(e). The difference between Rule 1.7 (a) and Rule 1.7(b) is that in the former, the lawyer is representing multiple interests in the same matter, while in the latter, the lawyer is representing a single interest, but a client of the lawyer who is represented by different counsel has an interest adverse to that advanced by the lawyer. The application of Rules 1.7(a) and 1.7(b) to specific facts must also take into consideration the principles of imputed disqualification described in Rule 1.10. Rule 1.7(c) states the procedure that must be used to obtain the client's informed consent if representation is to commence or continue in the circumstances described in Rule 1.7(b). Rule 1.7(d) governs withdrawal in cases arising under Rule 1.7(b)(1).

Representation Absolutely Prohibited – Rule 1.7(a)

[2] Institutional interests in preserving confidence in the adversary process and in the administration of justice preclude permitting a lawyer to represent adverse positions in the same matter. For that reason, paragraph (a) prohibits such conflicting representations, with or without client consent.

[3] The same lawyer (or law firm,*see*Rule 1.10) should not espouse adverse positions in the same matter during the course of any type of representation, whether such adverse positions are taken on behalf of clients or on behalf of the lawyer or an association of which the lawyer is a member. On the other hand, for purposes of Rule 1.7(a), an "adverse" position does not include inconsistent or alternative positions advanced by counsel on behalf of a single client. Rule 1.7(a) is intended to codify the result reached in D.C. Bar Legal Ethics Committee Opinion 204, including the conclusion that a rulemaking whose result will be applied retroactively in pending adjudications is the same matter as the adjudications, even though treated as separate proceedings by an agency. However, if the adverse positions to be taken relate to different matters, the absolute prohibition of paragraph (a) is inapplicable, even though paragraphs (b) and (c) may apply.

[4] The absolute prohibition of paragraph (a) applies only to situations in which a lawyer would be called upon to espouse adverse positions for different clients in the same matter. It is for this reason that paragraph (a) refers to adversity with respect to a "position taken or to be taken" in a matter rather than adversity with respect to the matter or the entire representation. This approach is intended to reduce the costs of litigation in other representations where parties have common, non-adverse interests on certain issues, but have adverse (or contingently or possibly adverse) positions with respect to other issues. If, for example, a lawyer would not be required to take adverse positions in providing joint representation of two clients in the liability phase of a case, it would be permissible to undertake such a limited representation. Then, after completion of the liability phase, and upon satisfying the requirements of paragraph (c) of this rule, and of any other applicable Rules, the lawyer could represent either one of those parties as to the damages phase of the case, even though the other, represented by separate counsel as to damages, might have an adverse position as to that phase of the case. Insofar as the absolute prohibition of paragraph (a) is concerned, a lawyer may represent two parties that may be adverse to each other as to some aspects of the case so long as the same lawyer does not represent both parties with respect to those positions. Such a representation comes within paragraph (b), rather than paragraph (a), and is therefore subject to the consent provisions of paragraph (c).

[5] The ability to represent two parties who have adverse interests as to portions of a case may be limited because the lawyer obtains confidences or secrets relating to a party while jointly representing both parties in one phase of the case. In some circumstances, such confidences or secrets might be useful, against the interests of the party to whom they relate, in a subsequent part of the case. Absent the informed consent of the party whose confidences or secrets are implicated, the subsequent adverse representation is governed by the "substantial relationship" test, which is set forth in Rule 1.9.

[6] The prohibition of paragraph (a) relates only to actual conflicts of positions, not to mere formalities. For example, a lawyer is not absolutely forbidden to provide joint or simultaneous representation if the clients' positions are only nominally but not actually adverse. Joint representation is commonly provided to incorporators of a business, to parties to a contract, in formulating estate plans for family members, and in other circumstances where the clients might be nominally adverse in some respect but have retained a lawyer to accomplish a common purpose. If no actual conflict of positions exists with respect to a matter, the absolute prohibition of paragraph (a) does not come into play. Thus, in the limited circumstances set forth in Opinion 143 of the D.C. Bar Legal Ethics Committee, this prohibition would not preclude the representation of both parties in an uncontested divorce proceeding, there being no actual conflict of positions based on the facts presented in Opinion 143. For further discussion of common representation issues, including intermediation, see Comments [14]-[18].

Representation Conditionally Prohibited – Rule 1.7(b)

[7] Paragraphs (b) and (c) are based upon two principles: (1) that a client is entitled to wholehearted and zealous representation of its interests, and (2) that the client as well as the lawyer must have the opportunity to judge and be satisfied that such representation can be provided. Consistent with these principles, paragraph (b) provides a general description of the types of circumstances in which representation is improper in the absence of informed consent. The underlying premise is that disclosure and informed consent are required before assuming a representation if there is any reason to doubt the lawyer's ability to provide wholehearted and zealous representation of a client or if a client might reasonably consider the representation of its interests to be adversely affected by the lawyer's assumption of the other representation in question. Although the lawyer must be satisfied that the representation can be wholeheartedly and zealously undertaken, if an objective observer would have any reasonable doubt on that issue, the client has a right to disclosure of all relevant considerations and the opportunity to be the judge of its own interests.

[8] A client may, on occasion, adopt unreasonable positions with respect to having the lawyer who is representing that client also represent other parties. Such an unreasonable position may be based on an aversion to the other parties being represented by a lawyer, or on some philosophical

or ideological ground having no foundation in the Rules regarding representation of conflicting interests. Whatever difficulties may be presented for the lawyer in such circumstances as a matter of client relations, the unreasonable positions taken by a client do not fall within the circumstances requiring notification and informed consent. Clients have broad discretion to terminate their representation by a lawyer and that discretion may generally be exercised on unreasonable as well as reasonable grounds.

[9] If the lawyer determines or can foresee that an issue with respect to the application of paragraph (b) exists, the only prudent course is for the lawyer to make disclosure, pursuant to paragraph (c), to each affected client and enable each to determine whether in its judgment the representation at issue is likely to affect its interests adversely.

[10] Paragraph (b) does not purport to state a uniform rule applicable to cases in which two clients may be adverse to each other in a matter in which neither is represented by the lawyer or in a situation in which two or more clients may be direct business competitors. The matter in which two clients are adverse may be so unrelated or insignificant as to have no possible effect upon a lawyer's ability to represent both in other matters. The fact that two clients are business competitors, standing alone, is usually not a bar to simultaneous representation. Thus, in a matter involving a specific party or parties, paragraphs (b)(1) and (c) require notice and informed consent if the lawyer will take a position on behalf of one client adverse to another client even though the lawyer represents the latter client only on an unrelated position or in an unrelated matter. Paragraphs (b)(2), (3), (4) and (c) require disclosure and informed consent in any situation in which the lawyer's representation of a client may be adversely affected by representation of another client or by any of the factors specified in paragraph (b)(4).

Individual Interest Conflicts

[11] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could adversely affect the lawyer's representation of the client. *See* D.C. Bar Legal Ethics Committee Opinion No. 210 (defense attorney negotiating position with United States Attorney's Office). 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*Comment [34] for specific commentary concerning affiliated business interests; Rule 1.8 for specific Rules pertaining to a number of individual attorney's interest conflicts, including business transactions with clients; Rule 1.8(j) for the effect of firm-wide imputation upon individual attorney interests.

[12] For the effect of a blood or marital relationship between lawyers representing different clients, *see* Rule 1.8(h). Disqualification arising from a close family relationship is not imputed.*See*Rule 1.8(j).

Positional Conflicts

[13] Ordinarily a lawyer may take inconsistent legal positions in different forums at different times on behalf of different clients. 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, without more, create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client in a given matter, as referred to in Rule 1.7(b), will adversely affect the lawyer's effectiveness in representing another client in the same or different matter; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position being taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the matters are pending, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved, and the clients' reasonable expectations in retaining the lawyer. 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, subject to the exception provided in Rule 1.7(d). *See* D.C. Legal Ethics Committee Opinion No. 265.

Special Considerations in Common Representation

[14] 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. 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. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. 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.

[15] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. 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.

[16] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit.*See*Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information relevant to the common representation will be shared, and explain the circumstances in which the lawyer may have to withdraw from any or all representations if one client later objects to continued common representation or sharing of such information. 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. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[17] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. 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. *See* Rule 1.2(c).

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

Lawyer's Duty to Make Inquiries to Determine Potential Conflicts

[19] The scope of and parties to a "matter" are typically apparent in on-the-record adversary proceedings or other proceedings in which a written record of the identity and the position of the parties exists. In Rule 1.7(b)(1), the phrase "matter involving a specific party or parties" refers to such situations. In other situations, however, it may not be clear to a lawyer whether the representation of one client is adverse to the interests of another client. For example, a lawyer may represent a client only with respect to one or a few of the client's areas of interest. Other lawyers,

or non-lawyers (such as lobbyists), or employees of the client (such as government relations personnel) may be representing that client on many issues whose scope and content are unknown to the lawyer. Clients often have many representatives acting for them, including multiple law firms, nonlawyer lobbyists, and client employees. A lawyer retained for a limited purpose may not be aware of the full range of a client's other interests or positions on issues. Except in matters involving a specific party or parties, a lawyer is not required to inquire of a client concerning the full range of that client's interests in issues, unless it is clear to the lawyer that there is a potential for adversity between the interests of clients of the lawyer. Where lawyers are associated in a firm within the meaning of Rule 1.10(a), the rule stated in the preceding sentence must be applied to all lawyers and all clients in the firm. Unless a lawyer is aware that representing one client involves seeking a result to which another client is opposed, Rule 1.7 is not violated by a representation that eventuates in the lawyer's unwittingly taking a position for one client adverse to the interests of another client. The test to be applied here is one of reasonableness and may turn on whether the lawyer has an effective conflict checking system in place.

Situations That Frequently Arise

[20] A number of types of situations frequently arise in which disclosure and informed consent are usually required. These include joint representation of parties to criminal and civil litigation, joint representation of incorporators of a business, joint representation of a business or government agency and its employees, representation of family members seeking estate planning or the drafting of wills, joint representation of an insurer and an insured, representation in circumstances in which the personal or financial interests of the lawyer, or the lawyer's family, might be affected by the representation, and other similar situations in which experience indicates that conflicts are likely to exist or arise. For example, a lawyer might not be able to represent a client vigorously if the client's adversary is a person with whom the lawyer has longstanding personal or social ties. The client is entitled to be informed of such circumstances so that an informed decision can be made concerning the advisability of retaining the lawyer who has such ties to the adversary. The principles of disclosure and informed consent are equally applicable to all such circumstances, except that if the positions to be taken by two clients in a matter as to which the lawyer represents both are actually adverse, then, as provided in paragraph (a), the lawyer may not undertake or continue the representation with respect to those issues even if disclosure has been made and informed consent obtained.

Organization Clients

[21] As is provided in Rule 1.13, the lawyer who represents a corporation, partnership, trade association or other organization-type client is deemed to represent that specific entity, and not its shareholders, owners, partners, members or "other constituents." Thus, for purposes of interpreting this rule, the specific entity represented by the lawyer is the "client." Ordinarily that client's affiliates (parents and subsidiaries), other stockholders and owners, partners, members, etc., are not considered to be clients of the lawyer. Generally, the lawyer for a corporation is not prohibited by legal ethics principles from representing the corporation in a matter in which the corporation's stockholders or other constituents are adverse to the corporation. *See* D.C. Bar Legal Ethics Committee Opinion No. 216. A fortiori, and consistent with the principle reflected in Rule 1.13, the lawyer for an organization normally should not be precluded from representing an unrelated client whose interests are adverse to the interests of an affiliate (*e.g.,*parent or subsidiary), stockholders and owners, partners, members, etc., of that organization in a matter that is separate from and not substantially related to the matter on which the lawyer represents the organization.

[22] However, there may be cases in which a lawyer is deemed to represent a constituent of an organization client. Such de facto representation has been found where a lawyer has received confidences from a constituent during the course of representing an organization client in circumstances in which the constituent reasonably believed that the lawyer was acting as the constituent's lawyer as well as the lawyer for the organization client. *See generally* ABA Formal Opinion 92-365. In general, representation may be implied where on the facts there is a

reasonable belief by the constituent that there is individual as well as collective representation. *Id.* The propriety of representation adverse to an affiliate or constituent of the organization client, therefore, must first be tested by determining whether a constituent is in fact a client of the lawyer. If it is, representation adverse to the constituent requires compliance with Rule 1.7. *See* ABA Opinion 92-365. The propriety of representation must also be tested by reference to the lawyer's obligation under Rule 1.6 to preserve confidences and secrets and to the obligations imposed by paragraphs (b)(2) through (b)(4) of this rule. Thus, absent informed consent under Rule 1.7(c), such adverse representation ordinarily would be improper if:

(a) the adverse matter is the same as, or substantially related to, the matter on which the lawyer represents the organization client,

(b) during the course of representation of the organization client the lawyer has in fact acquired confidences or secrets (as defined in Rule 1.6(b)) of the organization client or an affiliate or constituent that could be used to the disadvantage of any of the organization client or its affiliate or constituents, or

(c) such representation seeks a result that is likely to have a material adverse effect on the financial condition of the organization client.

[23] In addition, the propriety of representation adverse to an affiliate or constituent of the organization client must be tested by attempting to determine whether the adverse party is in substance the "alter ego" of the organization client. The alter ego case is one in which there is likely to be a reasonable expectation by the constituents or affiliates of an organization that each has an individual as well as a collective client-lawyer relationship with the lawyer, a likelihood that a result adverse to the constituent would also be adverse to the existing organization client, and a risk that both the new and the old representation would be so adversely affected that the conflict would not be "consentable." Although the alter ego criterion necessarily involves some imprecision, it may be usefully applied in a parent-subsidiary context, for example, by analyzing the following relevant factors: whether (i) the parent directly or indirectly owns all or substantially all of the voting stock of the subsidiary, (ii) the two companies have common directors, officers, office premises, or business activities, or (iii) a single legal department retains, supervises and pays outside lawyers for both the parent and the subsidiary. If all or most of those factors are present, for conflict of interest purposes those two entities normally would be considered alter egos of one another and the lawyer for one of them should refrain from engaging in representation adverse to the other, even on a matter where clauses (a), (b) and (c) of the preceding paragraph [22] are not applicable. Similarly, if the organization client is a corporation that is wholly owned by a single individual, in most cases for purposes of applying this rule, that client should be deemed to be the alter ego of its sole stockholder. Therefore, the corporation's lawyer should refrain from engaging in representation adverse to the sole stockholder, even on a matter where clauses (a), (b) and (c) of the preceding paragraph [22] are not applicable.

[24] If representation otherwise appropriate under the preceding paragraphs seeks a result that is likely ultimately to have a material adverse effect on the financial condition of the organization client, such representation is prohibited by Rule 1.7(b)(3). If the likely adverse effect on the financial condition of the organization client is not material, such representation is not prohibited by Rule 1.7(b)(3). Obviously, however, a lawyer should exercise restraint and sensitivity in determining whether to undertake such representation in a case of that type, particularly if the organization client does not realistically have the option to discharge the lawyer as counsel to the organization client.

[25] The provisions of paragraphs [20] through [23] are subject to any contrary agreement or other understanding between the client and the lawyer. In particular, the client has the right by means of the original engagement letter or otherwise to restrict the lawyer from engaging in representations otherwise permissible under the foregoing guidelines. If the lawyer agrees to such restrictions in order to obtain or keep the client's business, any such agreement between client and lawyer will take precedence over these guidelines. Conversely, an organization client, in order to obtain the lawyer's services, may in the original engagement letter or otherwise give informed consent to the lawyer in advance to engage in representations adverse to an affiliate, owner or other constituent of the client not otherwise permissible under the foregoing guidelines so long as

the requirements of Rule 1.7(c) can be met.

[26] In any event, in all cases referred to above, the lawyer must carefully consider whether Rule 1.7(b)(2) or Rule 1.7(b)(4) requires informed consent from the second client whom the lawyer proposes to represent adverse to an affiliate, owner or other constituent of the first client.

Disclosure and Consent

[27] Disclosure and informed consent are not mere formalities. Adequate disclosure requires such disclosure of the parties and their interests and positions as to enable each potential client to make a fully informed decision as to whether to proceed with the contemplated representation. If a lawyer's obligation to one or another client or to others or some other consideration precludes making such full disclosure to all affected parties, that fact alone precludes undertaking the representation at issue. Full disclosure also requires that clients be made aware of the possible extra expense, inconvenience, and other disadvantages that may arise if an actual conflict of position should later arise and the lawyer be required to terminate the representation.

[28] It is ordinarily prudent for the lawyer to provide at least a written summary of the considerations disclosed and to request and receive a written informed consent, although the rule does not require that disclosure be in writing or in any other particular form in all cases. Lawyers should also recognize that the form of disclosure sufficient for more sophisticated business clients may not be sufficient to permit less sophisticated clients to provide informed consent. Moreover, under the District of Columbia substantive law, the lawyer bears the burden of proof that informed consent was secured.

[29] The term "informed consent" is defined in Rule 1.0(e). As indicated in Comment [2] to that rule, a client's consent must not be coerced either by the lawyer or by any other person. In particular, the lawyer should not use the client's investment in previous representation by the lawyer as leverage to obtain or maintain representation that may be contrary to the client's best interests. If a lawyer has reason to believe that undue influence has been used by anyone to obtain agreement to the representation, the lawyer should not undertake the representation.

[30] The lawyer's authority to solicit and to act upon the client's consent to a conflict is limited further by the requirement that the lawyer reasonably believe that he or she will be able to provide competent and diligent representation to each affected client. Generally, it is doubtful that a lawyer could hold such a belief where the representation of one client is likely to have a substantial and material adverse effect upon the interests of another client, or where the lawyer's individual interests make it likely that the lawyer will be adversely situated to the client with respect to the subject-matter of the legal representation.

[31] Rule 1.7 permits advance waivers within certain limits and subject to certain client protections. Such waivers are permissible only if the prerequisites of the rule – namely "full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation" – are satisfied. Under the Rules' definition of "informed consent," the client must have "adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of action." See Rule 1.0(e). Ordinarily this will require that either (1) the consent is specific as to types of potentially adverse representations and types of adverse clients (e.g., a bank client for whom the lawyer performs corporate work waives the lawyer's representation of borrowers in mortgage loan transactions with that bank) or (2) the waiving client has available in-house or other current counsel independent of the lawyer soliciting the waiver.

[32] Rule 1.7(a) provides that a conflict arising from the lawyer's advancing adverse positions in the same matter cannot be waived in advance or otherwise. Although an advance waiver may permit the lawyer to act adversely to the waiving client in matters that are substantially related to the matter in which the lawyer represents that client, lawyers should take particular care in obtaining and acting pursuant to advance waivers where such a matter is involved.

Withdrawal

[33] It is much to be preferred that a representation that is likely to lead to a conflict be avoided before the representation begins, and a lawyer should bear this fact in mind in considering whether

disclosure should be made and informed consent obtained at the outset. If, however, a conflict arises after a representation has been undertaken, and the conflict falls within paragraph (a), or if a conflict arises under paragraph (b) and informed and uncoerced consent is not or cannot be obtained pursuant to paragraph (c), then the lawyer should withdraw from the representation, complying with Rule 1.16. Where a conflict is not foreseeable at the outset of representation and arises only under Rule 1.7(b)(1), a lawyer should seek informed consent to the conflict at the time that the conflict becomes evident, but if such consent is not given by the opposing party in the matter, the lawyer need not withdraw. In determining whether conflict is reasonably foreseeable, the test is an objective one. In determining the reasonableness of a lawyer's conduct, such factors as whether the lawyer (or lawyer's firm) has an adequate conflict-checking system in place, must be considered. Where more than one client is involved and the lawyer must withdraw because a conflict arises after representation has been undertaken, the question of whether the lawyer may continue to represent any of the clients is determined by Rule 1.9.

Imputed Disqualification

[34] All of the references in Rule 1.7 and its accompanying Comment to the limitation upon a "lawyer" must be read in light of the imputed disqualification provisions of Rule 1.10, which affect lawyers practicing in a firm.

[35] In the government lawyer context, Rule 1.7(b) is not intended to apply to conflicts between agencies or components of government (federal, state, or local) where the resolution of such conflicts has been entrusted by law, order, or regulation to a specific individual or entity.

Businesses Affiliated With a Lawyer or Firm

[36] Lawyers, either alone or through firms, may have interests in enterprises that do not practice law but that, in some or all of their work, become involved with lawyers or their clients either by assisting the lawyer in providing legal services or by providing related services to the client. Examples of such enterprises are accounting firms, consultants, real estate brokerages, and the like. The existence of such interests raises several questions under this rule. First, a lawyer's recommendation, as part of legal advice, that the client obtain the services of an enterprise in which the lawyer has an interest implicates paragraph 1.7(b)(4). The lawyer should not make such a recommendation unless able to conclude that the lawyer's professional judgment on behalf of the client will not be adversely affected. Even then, the lawyer should not make such a recommendation without full disclosure to the client so that the client can make a fully informed choice. Such disclosure should include the nature and substance of the lawyer's or the firm's interest in the related enterprise, alternative sources for the non-legal services in question, and sufficient information so that the client understands that the related enterprise's services are not legal services and that the client's relationship to the related enterprise will not be that of a client to attorney. Second, such a related enterprise may refer a potential client to the lawyer; the lawyer should take steps to assure that the related enterprise will inform the lawyer of all such referrals. The lawyer should not accept such a referral without full disclosure of the nature and substance of the lawyer's interest in the related enterprise. *See also* Rule 7.1(b). Third, the lawyer should be aware that the relationship of a related enterprise to its own customer may create a significant interest in the lawyer in the continuation of that relationship. The substantiality of such an interest may be enough to require the lawyer to decline a proffered client representation that would conflict with that interest; at least Rule 1.7(b)(4) and (c) may require the prospective client to be informed and to give informed consent before the representation could be undertaken. Fourth, a lawyer's interest in a related enterprise that may also serve the lawyer's clients creates a situation in which the lawyer must take unusual care to fashion the relationship among lawyer, client, and related enterprise to assure that the confidences and secrets are properly preserved pursuant to Rule 1.6 to the maximum extent possible. *See* Rule 5.3.

Sexual Relations Between Lawyer and Client

[37] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. Because of this fiduciary duty to clients, combining a

professional relationship with any intimate personal relationship may raise concerns about conflict of interest, impairment of the judgment of both lawyer and client, and preservation of attorney-client privilege. These concerns may be particularly acute when a lawyer has a sexual relationship with a client. Such a relationship may create a conflict of interest under Rule 1.7(b)(4) or violate other disciplinary rules, and it generally is imprudent even in the absence of an actual violation of these Rules.

[38] Especially when the client is an individual, the client's dependence on the lawyer's knowledge of the law is likely to make the relationship between lawyer and client unequal. A sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role and thereby violate the lawyer's basic obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant risk that the lawyer's emotional involvement will impair the lawyer's independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict the extent to which client confidences will be protected by the attorney-client privilege, because client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. The client's own emotional involvement may make it impossible for the client to give informed consent to these risks.

[39] Sexual relationships with the representative of an organization client may not present the same questions of inherent inequality as the relationship with an individual client. Nonetheless, impairment of the lawyer's independent professional judgment and protection of the attorney-client privilege are still of concern, particularly if outside counsel has a sexual relationship with a representative of the organization who supervises, directs, or regularly consults with an outside lawyer concerning the organization's legal matters. An in-house employee in an intimate personal relationship with outside counsel may not be able to assess and waive any conflict of interest for the organization because of the employee's personal involvement, and another representative of the organization may be required to determine whether to give informed consent to a waiver. The lawyer should consider not only the disciplinary rules but also the organization's personnel policies regarding sexual relationships (for example, prohibiting such relationships between supervisors and subordinates).

Short-Term Limited Legal Services

[40] For the application of this rule and Rules 1.9 and 1.10 when the lawyer undertakes to provide short-term limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or court, see Rule 6.5(a).

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