CONFLICTS OF INTEREST - ETHICAL OR SCREENING WALLS

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Prepared with the assistance of Toni Knudson, a 1995 Summer Associate with Perkins Coie, Portland, Oregon
ABA MODEL RULES OF PROFESSIONAL CONDUCT

Rule 1.9 Conflict of Interest: Former Client

(A) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

(B) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) Whose interests are materially adverse to that party; and

(2) About whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client consents after consultation.

(C) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) Use information relating to the representations to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has become generally known; or

(2) Reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

Rule 1.10 Imputed Disqualifications: General Rule

(A) 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 1.7, 1.8(e), 1.9 or 2.2.
(B) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(C) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
ILLINOIS RULES OF PROFESSIONAL CONDUCT (1995)

Rule 1.9. Conflict of Interest: Former Client

(A) A lawyer who has formerly represented a client in a matter shall not thereafter:

(1) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after disclosure; or

(2) Use information relating to the representation to the disadvantage of the former client, unless:

(a) Such use is permitted by Rule 1.6; or

(b) The information has become generally known.

Rule 1.10. Imputed Disqualification: General Rule

(A) A lawyer associated with a firm shall represent a client when the lawyer knows or reasonably should know that another lawyer associated with that firm could be prohibited from doing so by Rules 1.7, 1.8(c) or 1.9, except as permitted by Rules 1.10(b), (c) or (d), or by Rule 1.11 or Rule 1.12.

(B) When a lawyer becomes associated with a firm, the firm may not represent a person in a matter that the firm knows or reasonably should know is the same or substantially related to a matter in which the newly associated lawyer, or a firm with which that lawyer was associated, had previously represented a client whose interests are materially adverse to that person unless:

(1) The newly associated lawyer has no information protected by Rule 1.6 or Rule 1.9 that is material to the matter; or

(2) The newly associated lawyer is screened from any participation in the matter.

(C) When a lawyer has terminated an association with a firm, the firm may thereafter represent a person with interests materially adverse to those of a client represented by the formerly associated lawyer if:
(1) The matter is not the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) No lawyer remaining in the firm has information protected by Rule 1.6 and Rule 1.10 that is material to the matter.

(D) A disqualification prescribed by Rule 1.10 may be waived by the affected client under the conditions stated in Rule 1.7.

(E) For purposes of Rule 1.10, Rule 1.11, and Rule 1.12, a lawyer in a firm will be deemed to have been screened from any participation in a matter if:

(1) The lawyer has been isolated from confidences, secrets, and material knowledge concerning the matter;

(2) The lawyer has been isolated from all contact with the client or any agent, officer, or employee of the client and any witness for or against the client;

(3) The lawyer and the firm have been precluded from discussing the matter with each other; and

(4) The firm has taken affirmative steps to accomplish the foregoing.
MICHIGAN RULES OF PROFESSIONAL CONDUCT (1990)

Rule 1.9  Conflict of Interest: Former Client

(A) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

(B) Unless the former client consents after consultation, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated has previously represented a client:

(1) Whose interests are materially adverse to that person, and

(2) About whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(C) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) Use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has become generally known; or

(2) Reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

Rule 1.10  Imputed Disqualification: General Rule

(A) 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 1.7, 1.8(c), 1.9(a) or (c), or 2.2.

(B) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, is disqualified under Rule 1.9(b), unless:
(1) The disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(C) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer, and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(D) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
Rule 1.9 Conflict Of Interest: Former Client

A lawyer who has formerly represented a client in a matter shall not thereafter:

(A) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after a full disclosure of the circumstances and consultation; or

(B) Use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

Rule 1.10 Imputed Disqualification: General Rule

(A) 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 1.7, 1.8(c), 1.9 or 2.2.

(B) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter unless:

(1) The disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the appropriate client to enable it to ascertain compliance with the provisions of this rule.

(C) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(D) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.
WASHINGTON RULES OF PROFESSIONAL CONDUCT

Rule 1.9. Conflict of Interest; Former Client

A lawyer who has formerly represented a client in a matter shall not thereafter:

(A) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents in writing after consultation and a full disclosure of the material facts; or

(B) Use confidences or secrets relating to the representation to the disadvantage of the former client, except as rule 1.6 would permit.

Rule 1.10. Imputed Disqualification; General Rule

(A) Except as provided in section (b), 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 1.7, 1.8(c), 1.9, or 2.2.

(B) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer ("the personally disqualified lawyer"), or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired confidences or secrets protected by rules 1.6 and 1.9(b) that are material to the matter; provided that the prohibition on the firm shall not apply if:

1. The personally disqualified lawyer is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;

2. The former client of the personally disqualified lawyer receives notice of the conflict and the screening mechanism used to prohibit dissemination of confidential or secret information;

3. The firm is able to demonstrate by convincing evidence that no confidences or secrets that are material were transmitted by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client. Any presumption that confidences or secrets of the former client have
been or will be transmitted may be rebutted if the personally
disqualified lawyer serves on his or her former law firm and
former client an affidavit attesting that the personally disqualified
lawyer will not participate in the matter and will not discuss the
matter or the representation with any other lawyer or employee of
his or her current law firm, and attesting that during the period of
the lawyer's personal disqualification those lawyers or employees
who do participate in the matter will be apprised that the
personally disqualified lawyer is screened from participating in or
discussing the matter. Such affidavit shall describe the
procedures being used effectively to screen the personally
disqualified lawyer. Upon request of the former client, such
affidavit shall be updated periodically to show actual compliance
with the screening procedures. The law firm, the personally
disqualified lawyer, or the former client may seek judicial review
in a court of general jurisdiction of the screening mechanism
used, or may seek court supervision to ensure that
implementation of the screening procedures has occurred and that
effective actual compliance has been achieved.

(C) When a lawyer has terminated an association with a firm, the firm is not
prohibited from thereafter representing a person with interests materially adverse to
those of a client represented by the formerly associated lawyer unless:

(1) The matter is the same or substantially related to that in which the
formerly associated lawyer represented the client; and

(2) Any lawyer remaining in the firm has acquired confidences or
secrets protected by rules 1.6 and 1.9(b) that are material to the
matter.

(D) A disqualification prescribed by this rule may be waived by the affected
client under the conditions stated in Rule 1.7.
ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY

CANON 5

A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client

DR 5-105 Refusing to Accept or Continue employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner, or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment.
OREGON DISCIPLINARY RULES (1994)

DR 5-105  Conflicts of Interest:  Former and Current Clients

(A) Conflict of Interest.  A conflict of interest may be actual or likely.

(1) An "actual conflict of interest" exists when the lawyer has a duty to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client.

(2) A "likely conflict of interest" exists in all other situations in which the objective personal, business or property interests of the clients are adverse.  A "likely conflict of interest" does not include situations in which the only conflict is of a general economic or business nature.

(3) A conflict of interest is not present solely because one or more lawyers in a firm assert conflicting legal positions on behalf of different clients whom the lawyers represent in factually unrelated cases.  If, however, a lawyer actually knows of the assertion of the conflicting positions and also actually knows that an outcome favorable to one client in one case will adversely affect the client in another case, the lawyer may not continue with both representations or permit the other lawyers at the same firm to do so unless all clients consent after full disclosure.

(B) Knowledge of Conflict of Interest.  For purposes of determining a lawyer's knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer.

(C) Former Client Conflicts - Prohibition.  Except as permitted by DR 5-105(D), a lawyer who has represented a client in a matter shall not subsequently represent another client in the same or a significantly related matter when the interests of the current and former clients are in actual or likely conflict.  Matters are significantly related if either:

(1) Representation of the present client in the subsequent matter would, or would likely, inflict injury or damage upon the former client in connection with any proceeding, claim, controversy, transaction, investigation, charge, accusation, arrest or other
particular matter in which the lawyer previously represented the former client; or

(2) Representation of the former client provided the lawyer with confidences or secrets as defined in DR 4-101(a), the use of which would, or would likely, inflict injury or damage upon the former client in the course of the subsequent matter.

(D) Former Client Conflicts - Permissive Representation. A lawyer may represent a client in instances otherwise prohibited by DR 5-105(C) when both the current client and the former client consent to the representation after full disclosure.

(E) Current Client Conflicts - Prohibition. Except as provided in DR 5-105(F), a lawyer shall not represent multiple current clients in any matters when such representation would result in an actual or likely conflict.

(F) Current Client Conflicts - Permissive Representation. A lawyer may represent multiple current clients in instances otherwise prohibited by DR 5-105(E) when such representation would not result in an actual conflict and when each client consents to the multiple representation after full disclosure.

(G) Vicarious Disqualification of Affiliates. Except as permitted in subsections (D) and (F), when a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule other than DR 2-110(B)(3), DR 5-102(A) or DR 5-110, no other member of the lawyer's firm may accept or continue such employment.

(H) Disqualification Upon Termination of Employment. When a lawyer terminates the lawyer's association in a firm, neither the lawyer nor any firm member with which the terminating lawyer subsequently becomes affiliated shall accept or continue employment prohibited by DR 5-105(C) through (G).

(I) Screening Procedure Upon Termination of Employment. The prohibition stated in DR 5-105(H) shall not apply provided the personally disqualified lawyer is screened from any form of participation or representation in the matter. In order to ensure such screening:

(1) The personally disqualified lawyer shall serve on the lawyer's former law firm an affidavit attesting that during the period of the lawyer's disqualification the personally disqualified lawyer will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any
other firm member; and the personally disqualified lawyer shall serve, if requested by the former law firm, a further affidavit describing the lawyer's actual compliance with these undertakings promptly upon final disposition of the matter or representation.

(2) At least one firm member shall serve on the former law firm an affidavit attesting that all firm members are aware of the requirement that the personally disqualified lawyer be screened from participating in or discussing the matter or the representation and describing the procedures being followed to screen the personally disqualified lawyer; and at least one firm member shall serve, if requested by the former law firm, a further affidavit describing the actual compliance by the firm members with the procedures for screening the personally disqualified lawyer promptly upon final disposition of the matter or representation.

(3) No violation of DR 5-105(H) or of the requirements of DR 5-105(I) shall be deemed to have occurred if the personally disqualified lawyer does not know that the lawyer's firm members have accepted employment with respect to a matter which would require the making and service of such affidavits and if all firm members having knowledge of the accepted employment do not know of the disqualification.

(J) Effect of a Lawyer's Departure. When a lawyer has terminated an association with a firm, the firm is not prohibited by reason of the formerly associated lawyer's work from thereafter representing a person in a matter adverse to a client that was represented by the formerly associated lawyer unless one or more of the lawyers remaining at the firm would be disqualified pursuant to DR 5-105(C) or unless the closed file or other confidential information remains at the firm and consent is not obtained pursuant to DR 5-105(D).