



Rules and Relationships

Mindful Ethics

University of Miami School of Law

The Client



The Fundamentals



1.1 Competence



1.3 Diligence



1.4 Communication



1.6 Confidentiality

Additional Rules for the Client Relationship



Defining the Relationship



Prospective Clients – Rule 1.18

- (a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d).



Current Clients Rule 1.7

- (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:
 - (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.



Current Clients Rule 1.7

(b) **Notwithstanding the existence of a concurrent conflict of interest** under paragraph (a), a lawyer may represent a client if:

- (1) **the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
- (2) the representation is not **prohibited by law;**
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the **same litigation or other proceeding before a tribunal; and**
- (4) each affected client gives informed **consent, confirmed in writing.**

Former Client 1.9

- (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 gives informed consent, confirmed in writing.
- (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 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**; unless the former client gives informed consent, confirmed in writing.

Former Client -Rule 1.9

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 these Rules 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 these Rules would permit or require with respect to a client.

"Substantially Related"

- [3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.
- For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce.

Ending the Relationship

Rule 1.16
Terminating the
Relationship

Best practices

Mediation and Conflict

Rule 10.340 Conflicts of Interest

(a) Generally. A mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator's impartiality.

(b) Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.

(c) Effect of Disclosure. After appropriate disclosure, the mediator may serve if all parties agree. However, if a conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the parties.

*Relationships with the Court
and Opposing Counsel*

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Relationships with the Courts and Opposing Counsel

3.1 Meritorious Action



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graph TD; A[3.1 Meritorious Action] --> B[3.3 Candor to the Tribunal]; B --> C[3.4 Fairness to Opposing Counsel]; C --> D[3.5 Impartiality and Decorum of the Tribunal]; D --> E[8.2 Judicial and Legal Officials];
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3.3 Candor to the Tribunal

3.4 Fairness to Opposing
Counsel

3.5 Impartiality and Decorum
of the Tribunal

8.2 Judicial and Legal Officials

Relationships with Colleagues



Relationships with Colleagues

1

5.1 Responsibilities
of Partners,
Managers, and
Supervisory Lawyers

2

5.2 Responsibilities
of Subordinate
Lawyers

3

5.3 Responsibilities
Regarding
Nonlawyer
Assistance

Relationships with
others...

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Relationships with Others



Advertising and Solicitation



Advertising and Solicitation



7.1 COMMUNICATIONS
CONCERNING A
LAWYER'S SERVICES



7.2 SPECIFIC RULES



7.3 SOLICITATION OF
CLIENTS

The Umbrella of Misconduct



*The
Umbrella
of
Misconduct*

8.4
Misconduct
(a)-(g)

8.3
Reporting of
Professional
Misconduct



Relationship to Regulation



Relationship to Regulation

Self-Regulating,
but State Specific

Consider:

5.4 Professional
Independence of a
Lawyer

5.5 Unauthorized
Practice of Law;
Multijurisdictional
Practice of Law

The Bar Exam

Utah's New
Sandbox and other
States in Motion

Enough for Now?!

