

Alabama Rules of Professional Conduct

Client-Lawyer Relationship

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 consultation; or

(b) 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.

Comment

After termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this Rule. The principles in Rule 1.7 determine whether the interests of the present and former client are adverse. Thus, 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 scope of a "matter" for purposes of paragraph (a) may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

Disqualification from subsequent representation is for the protection of clients and can be waived by them. A waiver is effective only if there is disclosure of the circumstances, including the lawyer's intended role in behalf of the new client.

With regard to an opposing party's raising a question of conflict of interest, see Comment to Rule 1.7. With regard to disqualification of a firm with which a lawyer is associated, see Rule 1.10.

Comparison with Former Alabama Code of Professional Responsibility

There was no counterpart to paragraphs (a) and (b) in the Disciplinary Rules. The problem addressed in paragraph (a) was sometimes dealt with under the rubric of Canon 9 of the former Code, which provided: "A lawyer should avoid even the appearance of impropriety." EC 4-6 stated that the "obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment."

The provision in paragraph (a) for waiver by the former client is similar to DR 5-105(C).

The exception in the last sentence of paragraph (b) permits a lawyer to use information relating to a former client that is in the "public domain," a use that was also not prohibited by the former Code, which protected only "confidences and secrets." Since the scope of paragraph (a) is much broader than "confidences and secrets," it is necessary under the Rules to define when a lawyer may make use of information about a client after the client-lawyer relationship has terminated.