

**CLIENT-LAWYER RELATIONSHIP:
IMPUTATION OF
CONFLICT OF INTEREST** | **MRPC
1.10**

RULE 1.10 — IMPUTATION OF CONFLICT

(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 or 1.9, **UNLESS**

(1) the prohibition is based on a personal interest of the disqualified lawyer **and** does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; **or**

RULE 1.10 – IMPUTATION OF CONFLICT

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and

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

RULE 1.10 — IMPUTATION

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, shall include description of the screening procedures employed; statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

RULE 1.10 – IMPUTATION...

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

1.10: AFTER TERMINATION

(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:**

1.10: AFTER TERMINATION CONTINUED...

(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.

1.10: WAIVER AND DISQUALIFICATION

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

RULE 1.10 COMMENT [1]

[1] For purposes of the Rules of Professional Conduct, the term “firm” denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

PRINCIPLES OF IMPUTED DISQUALIFICATION

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm.

Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated.

PRINCIPLES OF IMPUTED DISQUALIFICATION

[2] Paragraph (a)(1) operates only among the lawyers currently associated in a firm.

When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(a)(2) and 1.10 (b).

1.10 COMMENT [3]

[3] The rule in paragraph (a) does not prohibit representation whether neither questions of client loyalty nor protection of confidential information are presented.

1.10 COMMENT [3]

When one lawyer in a firm could not effectively represent a client because of strong political beliefs, **for example**, but that lawyer will not work on the case and their personal belief will not materially limit the representation by others in the firm, the firm should not be disqualified.

1.10 COMMENT [3]

On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

1.10 COMMENT [4] - NON-LAWYERS

[4] The Rule in (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. (a) does not forbid representation if the lawyer is prohibited from acting because of events before the person became a lawyer, **for example**, work that the person did as a law student.

1.10 COMMENT [4] - NON-LAWYERS

Such persons, however, ordinarily **must be screened** from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect.

RULE 1.10 - COMMENT [5]

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm.

The Rule applies regardless of when the formerly associated lawyer represented the client.

RULE 1.10 - COMMENT [5]

[5] However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7.

Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

RULE 1.10 - COMMENT [6]

[6] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7.

The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing.

RULE 1.10 - COMMENT [6]

[6] ...In some cases, the risk may be so severe that the conflict may not be cured by client consent.

For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22].

For a definition of informed consent, see Rule 1.0(e).

1.10 COMMENT [7]

[7] Rule 1.10(a)(2) similarly removes the imputation otherwise required by Rule 1.10(a), but unlike section (c), it does so without requiring that there be informed consent by the former client.

Instead, it requires that the procedures laid out in sections (a)(2)(i)-(iii) be followed. A description of effective screening mechanisms appears in Rule 1.0(k).

1.10 COMMENT [7]

[7] ...Lawyers should be aware, however, that, even where screening mechanisms have been adopted, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.

1.10 COMMENT [8]

[8] Paragraph (a)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

1.10 COMMENT - NOTICE

[9] Notice requirement in (a)(2)(ii) should include: (1) description of the screened lawyer's prior representation and (2) statement by the screened lawyer and the firm that the client's material confidential information has not been disclosed or used in violation of the Rules.

1.10 COMMENT - NOTICE

[9] ...Notice should be given as soon as practicable after the need for screening becomes apparent.

Notice is intended to enable the former client to evaluate and comment upon the effectiveness of the screening procedures.

1.10 COMMENTS: CERTIFICATION

[10] The certifications required by paragraph (a)(2)(iii) give the former client assurance that the client's material confidential information has not been disclosed or used inappropriately, either prior to timely implementation of a screen or thereafter. If compliance cannot be certified, the certificate must describe the failure to comply.

1.10 COMMENT - FORMER GOV'T EMPLOYEES

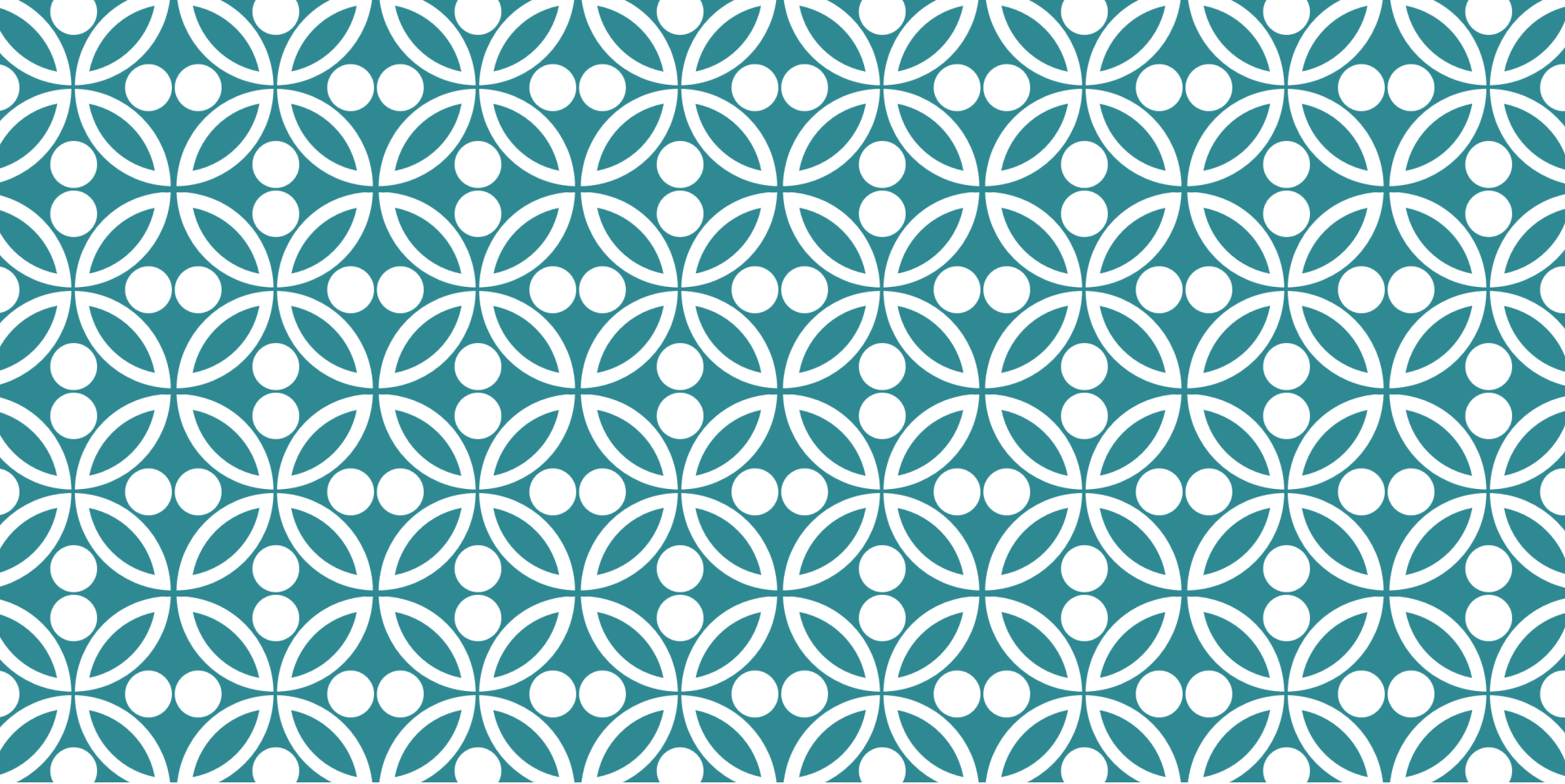
[1 1] When lawyer has joined a private firm after having represented the government, imputation is governed under Rule 1.1 1(b) and (c), not this Rule.

1.10 COMMENT - FORMER GOV'T EMPLOYEES

[11] ...Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

RULE 1.10 - FINAL COMMENT

[12] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.



CONFLICTS OF INTEREST:
GOV'T OFFICER &
EMPLOYEES | **MRPC**
1.11

RULE 1.11- GOV'T OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, **unless** the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

RULE 1.11- GOV'T OFFICERS AND EMPLOYEES

(b) If a lawyer is disqualified from representation under (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter **unless**:

(1) the disqualified lawyer is timely 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 gov't agency to enable it to ascertain compliance with the provisions of this rule

RULE 1.11- GOV'T OFFICERS AND EMPLOYEES

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person.

RULE 1.11- GOV'T OFFICERS AND EMPLOYEES

(c) ...As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public.

RULE 1.11- GOV'T OFFICERS AND EMPLOYEES

(c) ...A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

RULE 1.11- GOV'T OFFICERS AND EMPLOYEES

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) Shall not:

(i) participate in a matter which the lawyer participated personally and substantially while in private practice/nongovernmental employment, **unless** the appropriate government agency gives its informed consent, confirmed in writing; or

RULE 1.11- GOV'T OFFICERS AND EMPLOYEES

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) Shall not:

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a **matter** in which the lawyer is participating personally and substantially, **except** that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b).

RULE 1.11- GOV'T OFFICERS AND EMPLOYEES

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, **and**

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

RULE 1.11- COMMENT

[1] A lawyer who has served or is currently serving as a public officer or employee is subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7.

In addition, such a lawyer may be subject to statutes and gov't regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the gov't agency may give consent under this Rule.

RULE 1.11 COMMENT

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client.

Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule.

RULE 1.11 COMMENT

[2] ...Rather, (b) sets forth a special imputation rule for former gov't lawyers that provides for screening and notice.

Because of the special problems raised by imputation within a gov't agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the gov't to other associated gov't officers or employees, although ordinarily it will be prudent to screen such lawyers.

RULE 1.11 COMMENT

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client.

RULE 1.11 COMMENT

[3] ...**For example**, a lawyer who has pursued a claim on behalf of the gov't may not pursue the same claim on behalf of a later private client after the lawyer has left gov't service, except when authorized to do so by the gov't agency under paragraph (a).

RULE 1.11 COMMENT

[3] ...**Similarly**, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the gov't, except when authorized to do so by paragraph (d).

RULE 1.11 COMMENT

[4] This Rule represents a balancing of interests. On the one hand, where the clients are a gov't agency and another client, private or public, the risk exists that power vested in that agency might be used for the special benefit of the other client.

RULE 1.11 COMMENT

[4] ...A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the gov't.

Also, unfair advantage could accrue to the other client by reason of access to confidential gov't information about the client's adversary obtainable only through the lawyer's gov't service

RULE 1.11 COMMENT

[4] ...On the other hand, the rules governing lawyers presently or formerly employed by a gov't agency should not be so restrictive as to inhibit transfer of employment to and from the gov't. The gov't has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards.

Thus a former gov't lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially.

RULE 1.11 COMMENT

[4] ...The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

1.11 COMMENT: TRANSFERS WITHIN GOV'T

[5] When a lawyer has been employed by one gov't agency and then moves to a second gov't agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency.

However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do.

1.11 COMMENT: COMPENSATION PROHIBITION

[6] Paragraphs (b) and (c) contemplate a screening arrangement. These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, **but** that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

RULE 1.11 COMMENT: NOTICE

[7] Notice, including a description of the screened lawyer's prior representation **and** of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

RULE 1.11 COMMENT: KNOWLEDGE

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

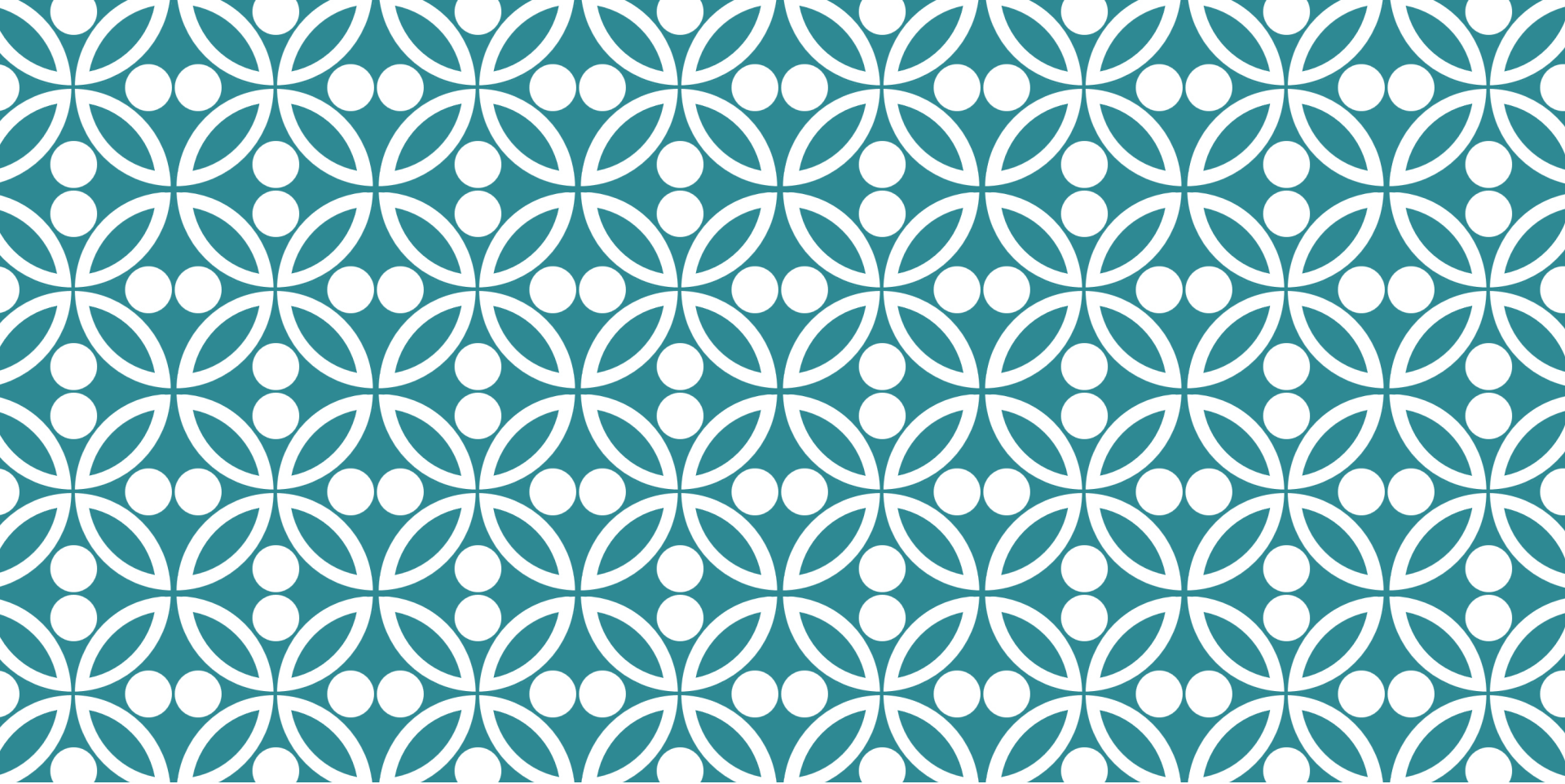
RULE 1.11 COMMENT: JOINT REPRESENTATION

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

RULE 1.11 COMMENT - DEFINITION

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form.

In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.



**FORMER JUDGE, ARBITRATOR,
MEDIATOR OR OTHER 3RD PARTIES**

**MRPC
1.12**

RULE 1.12

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, **UNLESS** all parties to the proceeding give informed consent, confirmed in writing.

RULE 1.12

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral.

RULE 1.12

(b) ...A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, **BUT** only after the lawyer has notified the judge or other adjudicative officer.

RULE 1.12 IMPUTATION

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter **unless**:

(1) the disqualified lawyer is timely 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 parties and any appropriate tribunal.

RULE 1.12 MULTI-MEMBER ARBITRATION

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

COMMENT

[1] The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate.

COMMENT

The fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits.

COMMENT 1.12: ADJUDICATING OFFICERS

The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges.

COMMENT

[2] Lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially.

This Rule forbids such representation **UNLESS** all of the parties to the proceedings give their informed consent, confirmed in writing.

Other law or codes of ethics may impose more stringent standards of personal or imputed disqualification.

COMMENT

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality.

Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

COMMENT

[4] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

COMMENT 1.12: NOTICE

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.