

RULE CHANGE 2025(07)

COLORADO RULES OF PROFESSIONAL CONDUCT

Rules 1.7, 1.10, 1.11, 1.12, 1.18, 2.4, 3.3, 3.5

Rule 1.7. Conflict of Interest: Current Clients

[NO CHANGE]

COMMENT

[1] - [16] [NO CHANGE]

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(~~nm~~)), such representation may be precluded by paragraph (b)(1).

[18] - [19] [NO CHANGE]

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(~~on~~) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

[21] - [35] [NO CHANGE]

Rule 1.10. Imputation of Conflicts of Interest: General Rule

[NO CHANGE]

COMMENT

[1] - [3] [NO CHANGE]

[4] The rule in paragraph (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. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. 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. See Rules 1.0(~~1k~~) and 5.3.

[5] - [8] [NO CHANGE]

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

[NO CHANGE]

COMMENT

[1] – [5] [NO CHANGE]

[6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(~~1k~~) (requirements for screening procedures). 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.

[7] - [10] [NO CHANGE]

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

[NO CHANGE]

COMMENT

[1] - [3] [NO CHANGE]

[4] Requirements for screening procedures are stated in Rule 1.0(~~1k~~). 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.

[5] [NO CHANGE]

Rule 1.18. Duties to Prospective Client

[NO CHANGE]

COMMENT

[1] – [6] [NO CHANGE]

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the

alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(~~1k~~) (requirements for screening procedures). Paragraph (d)(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.

[8] - [9] [NO CHANGE]

Rule 2.4. Lawyer Serving as Third-Party Neutral

[NO CHANGE]

COMMENT

[1] - [4] [NO CHANGE]

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(~~n#~~)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

Rule 3.3. Candor Toward the Tribunal

[NO CHANGE]

COMMENT

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(~~n#~~) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] - [15] [NO CHANGE]

Rule 3.5. Impartiality and Decorum of the Tribunal

[NO CHANGE]

COMMENT

[1] - [4] [NO CHANGE]

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(~~n#~~).

Rule 1.7. Conflict of Interest: Current Clients

[NO CHANGE]

COMMENT

[1] - [16] [NO CHANGE]

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(n)), such representation may be precluded by paragraph (b)(1).

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[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(o) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

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information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(l) and 5.3.

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Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

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[7] - [10] [NO CHANGE]

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

[NO CHANGE]

COMMENT

[1] - [3] [NO CHANGE]

[4] Requirements for screening procedures are stated in Rule 1.0(l). 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.

[5] [NO CHANGE]

Rule 1.18. Duties to Prospective Client

[NO CHANGE]

COMMENT

[1] – [6] [NO CHANGE]

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all

disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(1) (requirements for screening procedures). Paragraph (d)(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.

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Rule 2.4. Lawyer Serving as Third-Party Neutral

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Rule 3.3. Candor Toward the Tribunal

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[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(n) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

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[NO CHANGE]

COMMENT

[1] - [4] [NO CHANGE]

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(n).

Amended and Adopted by the Court, En Banc, February 6, 2025, effective immediately.

By the Court:

**William W. Hood, III
Justice, Colorado Supreme Court**