

*Comparison to Oregon Code*

This rule replaces DR 5-105(C), (D) and (H). Like Rule 1.7, this rule is a significant departure from the language and structure of the Oregon Code provisions on conflicts. Paragraph (a) replaces the sometimes confusing reference to “actual or likely conflict” between current and former client with the simpler “interests [that are] materially adverse.” The prohibition applies to matters that are the same or “substantially related,” which is virtually identical to the Oregon Code standard of “significantly related.”

Paragraph (b) replaces the limitation of DR 5-105(H), but is an arguably clearer expression of the prohibition. The new language makes it clear that a lawyer who moves to a new firm is prohibited from being adverse to a client of the lawyer’s former firm only if the lawyer has acquired confidential information material to the matter while at the former firm.

Paragraph (c) makes clear that the duty not to use confidential information to the client’s disadvantage continues after the conclusion of the representation, except where the information “has become generally known.”

Paragraph (d) defines “substantially related.” The definition is taken in part from former DR 5-105(D) and in part from Comment [3] to ABA Model Rule 1.9.

*Comparison to ABA Model Rule*

ABA Model Rule 1.9(a) and (b) require consent only of the former client. The Model Rule also has no definition of “substantially related;” this definition was derived in part from the Comment to MR 1.9.

**RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST;  
SCREENING**

**(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 the prohibition is based on a personal interest of the prohibited lawyer or on Rule 1.7(a)(3) and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.**

**(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) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9, unless the personally disqualified lawyer is promptly screened from any form of participation or representation in the matter and**

**written notice of the screening procedures employed is promptly given to any affected former client.**

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

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

*Adopted 01/01/05*

*Amended 12/01/06:*

*Paragraph (a) amended to include reference to Rule 1.7(a)(3).*

*Amended 01/01/14:*

*Paragraph (c) revised to eliminate detailed screening requirements and to require notice to the affected client rather than the lawyer’s former firm.*

*Defined Terms (see Rule 1.0):*

*“Firm”*

*“Know”*

*“Knowingly”*

*“Law firm”*

*“Matter”*

*“Screened”*

*“Substantial”*

*Comparison to Oregon Code*

Paragraph (a) is similar to the vicarious disqualification provisions of DR 5-105(G), except that it does not apply when the disqualification is based only on a “personal interest” of the disqualified lawyer that will not limit the ability of the other lawyers in the firm to represent the client.

Paragraph (b) is substantially the same as DR 5-105(J).

Paragraph (d) is similar to DR 5-105 in allowing clients to consent to what would otherwise be imputed conflicts.

Paragraph (e) has no counterpart in the Oregon Code because the Oregon Code does not have a special rule addressing government lawyer conflicts.

*Comparison to ABA Model Rule*

Paragraphs (a) is similar to the ABA Model Rule, but includes reference to “spouse/family” conflicts which are not separately addressed in the Model Rule. Paragraph (b) is identical to the ABA Model Rule.

The title has been changed to include “Screening.”

**RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR  
FORMER AND CURRENT GOVERNMENT OFFICERS AND  
EMPLOYEES**

**(a) Except as Rule 1.12 or 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**