

Paragraph (c) applies the vicarious disqualification that would be imposed under DR 5-105(G) to a DR 5-109 conflict; the screening provision is broader than DR 5-105(I), which is limited to lawyers moving between firms.

Paragraph (d) has no counterpart in the Oregon Code.

Comparison to ABA Model Rule

This is the ABA Model Rule, except that it requires screening substantially in accordance with the specific procedures in Rule 1.10(c). It deviates slightly to clarify that (b) applies to staff lawyers who do not perform traditional "law clerk" functions.

RULE 1.13 ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent may only be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Adopted 01/01/05

Amended 12/01/06:

Paragraph (b) amended to conform to ABA Model Rule 1.13(b).

Defined Terms (see Rule 1.0):

"Believes"

"Information relating to the representation"

"Knows"

"Matter"

"Reasonable"

"Reasonably"

"Reasonably believes"

"Reasonably should know"

"Substantial"

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code.

Comparison to ABA Model Rule

This is the ABA Model Rule, as amended in August 2003, except that in paragraph (g), the words "may only" replace "shall" to make it clear that the rule does not require the organization to consent.

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.