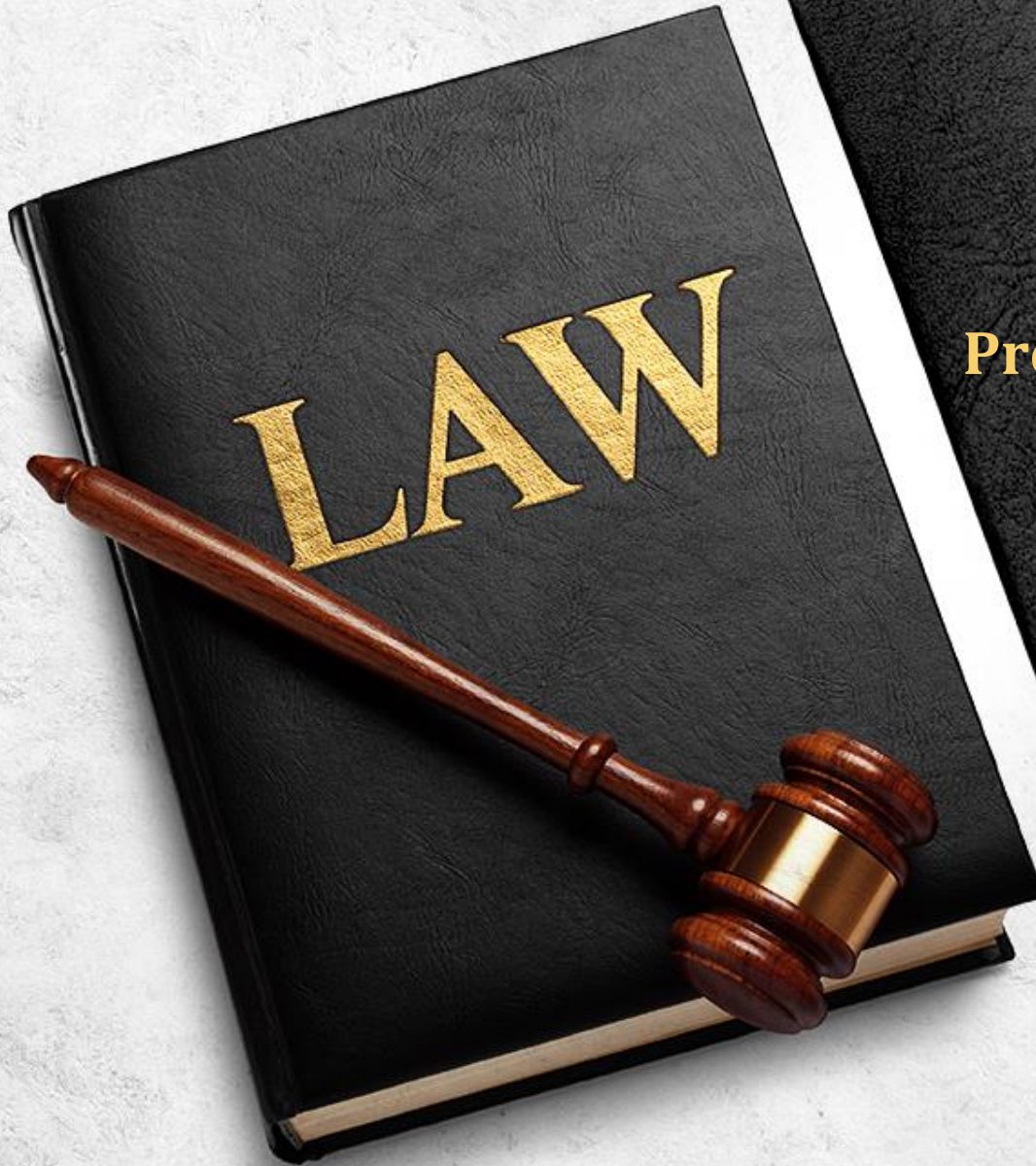


Legal Ethics

Lecture 10

Prof. Marvin Longabaugh

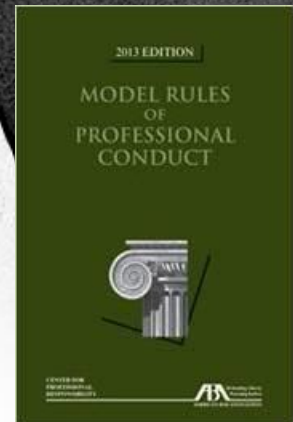
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MRPC 1.9

Duties to Former Clients

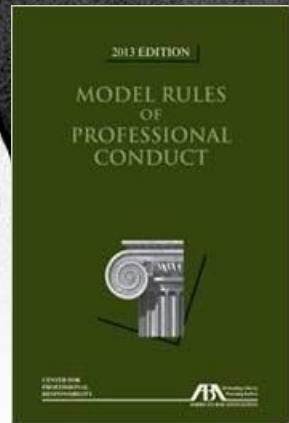
- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
 - (1) whose interests are materially adverse to that person; and
 - (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter unless the former client gives informed consent, confirmed in writing.



MRPC 1.9

Duties to Former Clients

- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.



Conflicts of Interest:

Rules Regarding Former Clients (MRPC Rule 1.9)

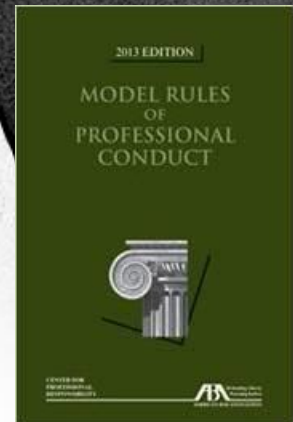
- **An attorney or firm cannot**
 - **Oppose a former client OR represent another whose interests are 'materially adverse' to the former client**
 - **In a substantially related matter**
 - If the matter is totally unrelated to the former client's representation, it's less likely that it would interfere with the current representation
 - **Unless the former client consents after consultation**
 - Even if the client consents, the attorney or firm must be super careful not to break the confidentiality rules and...
 - Must NOT use confidential information against the client in the subsequent proceeding
- **Note:** *Conflicts can also arise because of familiar or friendship interests; not solely based on a professional relationship*



MRPC 1.7

Conflict of Interest: Current Clients

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.



Conflicts of Interest:

Rules Regarding Current Clients (MRPC Rule 1.7)

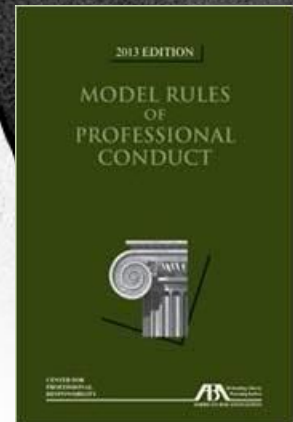
- A firm cannot represent any client in a proceeding that is ***materially adverse*** to another current client, unless
 - The firm ***reasonably*** believes that the representation will not adversely affect the relationship with the other client **AND**
 - BOTH clients consent after full consultation and disclosure
- The same applies to any proceeding that tends to compromise the loyalty or effectiveness of the representation of either client
- “***Reasonably believes***” means that a reasonable person would assume that the firm would be capable of doing both jobs adequately and loyally under the circumstances



MRPC 1.10

Imputation of Conflicts of Interest

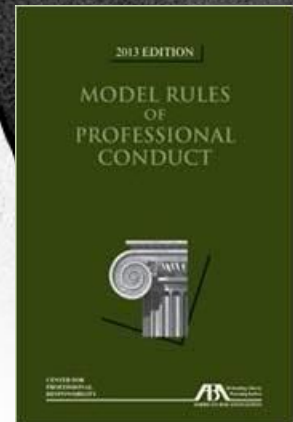
- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless
 - (1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or
 - (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;
 - (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, which shall include a description of the screening procedures employed; a 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
 - (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.



MRPC 1.10

Imputation of Conflicts of Interest

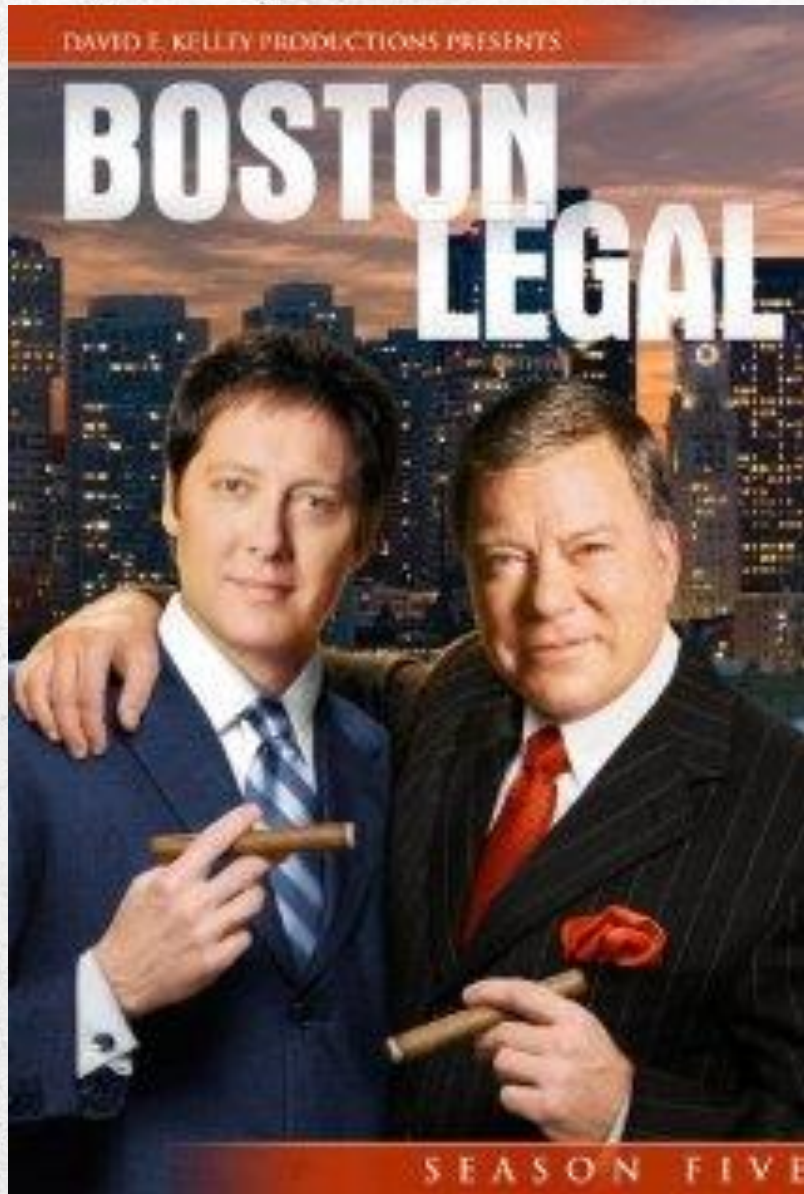
- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
 - (1) the matter is 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) 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.



Boston Legal (Season 01)

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Conflicts of Interest: Imputed Disqualification

- This often applies where:
 - A new attorney joins a firm and brings a *new client* to the firm who is in conflict with a firm client
 - A new attorney with confidential information *joins a firm* which opposes the client about which the entering member has a conflict
 - A member of a firm takes on a client *without knowing of a conflict involving a different member of the firm*
- **General Rule**
 - **If one member of a firm is disqualified, the entire firm is disqualified**



Successive Government and Private Employment – MRPC 1.11



- No attorney in new firm may work on matter former government attorney participated in personally and substantially, unless:
 - Disqualified attorney is “screened” from participation, **and**
 - Disqualified attorney does not receive part of the fee, **and**
 - Written notice is given to the government
- Government attorney
 - Must not work on matter they participated in personally and substantially when in private practice unless appropriate client gives informed consent in writing
 - Must not negotiate for private employment with any party in any matter in which they participated in personally and substantially



Imputed Disqualification Exception: The Ethical “Wall”

- Most states allow the firm to erect a **“wall of separation”** (also sometimes called a “Chinese Wall”) between the person with the conflict and the people handling the case.
- **The person with the conflict must:**
 - Be prevented from any contact with sensitive documents or materials related to the case
 - Not help with the strategy planning for the case
 - Avoid discussing the case with those working on it
 - Make sure that no documents or information obtained through the representation is used against the other client
 - Not obtain any portion of the fee that the firm earns from the representation



Other Situations Where Disqualification May Be Required

- Suppose that, instead of a lawyer who has represented a party changing firms, it is a secretary or paralegal that does so? Does Rule 1.9 apply? Is *screening* the solution?
- Rule 1.9 applies only to lawyers.
- However, the firm (under Rules 1.6 and 5.3) may have to protect against use or disclosure of confidential information.
- Rule 1.10, Comment 4, deals with imputation of conflicts in the non-lawyer's new firm.
- The new firm is not disqualified **if the firm screens the non-lawyer** from any participation in the case.



Quick Quiz



End Of Class Review Quiz

15

**THE
BIG
QUIZ**



The End

