

The Rules of Professional Conduct Which Govern Your Lawyer Also
Protect You as a Client
by Robyn Phillips

Lawyers wear multiple hats. “Each lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”^[i] In addition to having competency as to the substantive laws, all lawyers have a duty to abide by the Rules of Professional Conduct. These rules can differ slightly by state, but are based on the Model Rules and have common underlying premises. Near the top of these important rules are those protecting the confidential information of each client and governing a lawyer’s obligation to avoid conflicts of interest between clients.

Subject to a few extremely narrow exceptions, a lawyer is not allowed to reveal information relating to the representation of a client, unless the client has given informed consent or the disclosure is impliedly authorized in order to carry out the representation.^[ii] This rule is based on the principle that the attorney-client relationship is confidential and is considered a hallmark of our judicial system. This confidentiality is intended to encourage clients to seek legal assistance and communicate fully and frankly with their lawyer. Likewise, the lawyer needs full disclosure from the client in order to fully understand the situation and provide effective legal advice.

In addition, lawyers have obligations to avoid a conflict of interest between clients, whether they are current clients, former clients or even prospective clients. The Rules of Professional Conduct include rules relating to each of these client relationships and the obligations that arise because of the attorney-client relationship. Careful consideration and implementation of steps by the lawyer to meet these rules protects each client and aids in the function of our judicial system.

When you are contacting a lawyer for the first time or even calling a lawyer you have used in the past for a new matter, that lawyer is taking steps to run what may be referred to as a “conflict check”. Each lawyer has an obligation not to undertake representation that gives rise to a “concurrent conflict of interest”. ^[iii] 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

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interest of the lawyer.”[\[iv\]](#) The rule does provide limited exceptions which require informed consent be given by both clients.[\[v\]](#)

Similarly, while not having quite as broad protection, even former clients are protected under the Rules of Professional Conduct. More specifically, attorneys are prohibited from representing another person in the same or substantially related matter in which the new client’s interests are materially adverse to the interests of the former client, unless the former client gives informed consent in writing.[\[vi\]](#) A matter is “substantially related” if it involves the same transaction or legal dispute or if there is substantial risk that confidential factual information obtained in the prior representation would materially advance the new client’s position in the subsequent matter.[\[vii\]](#) In addition, with some narrow exceptions, a lawyer cannot use information relating to the representation of the former client to that former client’s disadvantage or reveal that information.[\[viii\]](#)

Clients should be very careful in giving such consent, whether it relates to the release of information relating to representation or even more importantly as it relates to conflicts of interest. A client should ask questions, understand the issues and, most importantly, understand the ramifications of giving consent. The rules relating to preserving client confidentiality and avoiding conflicts serve an important purpose, and the protections provided by these rules should not be given up lightly.

Taking care to preserve client confidences and avoid conflicts of interest serves the public interest because people are more likely to seek legal advice and thus understand their obligations under the law. This is good for the client, our society and our legal system.

[\[i\]](#) Utah Rules of Professional Conduct, Preamble, Comment [1] (2015).

[\[ii\]](#) Utah Rules of Professional Conduct, Rule 1.6 (a).

[\[iii\]](#) Utah Rules of Professional Conduct, Rule 1.7(a).

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[iv] *Id.*

[v] Utah Rules of Professional Conduct, Rule 1.7(b).

[vi] Utah Rules of Professional Conduct, Rule 1.9(a).

[vii] Utah Rules of Professional Conduct, Rule 1.9, Comment [3].

[viii] Utah Rules of Professional Conduct, Rule 1.9(c).