

Model Conflicts Check Policy

Case Conflicts Policy

Purpose: The purpose of this conflicts policy is to ensure that [ORGANIZATION] does not accept any case for representation that presents a conflict of interest and that, where a conflict of interest arises during the course of representation, [ORGANIZATION] staff appropriately handle the situation. Conflicts of interest can lead to serious ethical problems and harm client interests. This policy aims to avoid such outcomes and assure compliance with the Oregon Rules of Professional Conduct (ORPC).

Model Policy:

[ORGANIZATION] staff will check all new cases for conflicts before accepting that case for representation. A case may not be accepted for representation by



[ORGANIZATION] unless 1) no conflict of interest exists under ORPC 1.7(a)¹ and 1.9²; or 2) the existing conflict can be waived under ORPC 1.7(b)³ or 1.9, and all relevant parties agree to waive the conflict under the relevant rule. In determining whether a

¹ Rule 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 current conflict of interest. A current conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; (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; or (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

² Rule 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 each affected 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 each affected client gives informed consent, confirmed in writing. (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. (d) For purposes of this rule, matters are "substantially related" if (1) the lawyer's representation of the current client will injure or damage the former client in connection with the same transaction or legal dispute in which the lawyer previously represented the former client; or (2) there is a substantial risk that confidential factual information as would normally have been obtained in the prior representation of the former client would materially advance the current client's position in the subsequent matter.

³ Rule 1.7(b) Notwithstanding the existence of a current 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 obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and (4) each affected client gives informed consent, confirmed in writing.



conflict of interest exists, [ORGANIZATION] shall account for the imputation rules established by ORPC 1.10⁴ and all other relevant ethical rules.

When a conflict of interest under ORPC 1.7(a) arises between existing clients of the organization, [ORGANIZATION] must determine whether that conflict is waivable under ORPC 1.7(b). If the conflict can be waived, both clients must consent to the waiver, in writing, for representation of either party to continue. If either or both parties decline to waive the conflict, [ORGANIZATION]'s representatives must withdraw from representation under the procedures established by ORPC 1.16.⁵

⁴ 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.

⁵ RULE 1.16 DECLINING OR TERMINATING REPRESENTATION (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law; . . . (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation. (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.



All adverse parties must be promptly entered and marked as such in existing cases. Adverse parties should be designated in a way that the names are easily searchable so that conflicts can be identified before beginning intake or action on a new case.

[ORGANIZATION] provides all staff with training materials to help staff understand, spot, and avoid conflicts of interest.

Model Protocol:

[ORGANIZATION] relies on [SYSTEM] to perform conflicts checks. [SYSTEM] houses information regarding every client [ORGANIZATION] has ever represented, the names of prospective clients, the names of declined prospective clients, the names of [ORGANIZATION] staff, and the names of close relatives of [ORGANIZATION] staff to assure that it captures information relevant to a conflicts search. In entering names into [SYSTEM], [ORGANIZATION] staff shall include variations on names, such as marital and maiden names.

All [ORGANIZATION] staff who work with clients must maintain a personal list of current and former clients. When a new legal representative joins [ORGANIZATION], that staff member must review a list of [ORGANIZATION's] clients and compare it with a list of all their former clients to determine whether there is a conflict of interest under ORPC 1.9. If the new hire is disqualified from representing any of [ORGANIZATION's] clients, then, per ORPC 1.10(c), the new hire must be promptly screened and written notice of the screening procedures must be promptly provided to the new hire's affected former client(s). Alternatively, if the new hire's former client consents to waiver of the conflict in writing in accordance with ORPC 1.7, the new hire need not be screened. Former government employees who join [ORGANIZATION] shall follow ORPC 1.11 upon joining [ORGANIZATION] to assess what, if any, conflicts of interest they may have at [ORGANIZATION] and proceed appropriately in accordance



with that rule.⁶ After a new hire performs her conflicts check, a list of her former

⁶ 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 (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c); and (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule. (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c). (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee: (1) is subject to Rules 1.7 and 1.9; and (2) shall not: (i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client. (ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client. (iii) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official. (iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client. (v) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the lawyer's former client and the appropriate government agency give informed consent, confirmed in writing; or (vi) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk or staff lawyer to or otherwise assisting in the official duties of a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b). (e) Notwithstanding any Rule of Professional Conduct, and consistent with the "debate" clause, Article IV, section 9, of the Oregon Constitution, or the "speech or debate" clause, Article I, section 6, of the United States Constitution, a lawyer-legislator shall



clients shall be incorporated into [SYSTEM].

Before providing a legal consultation or accepting any prospective client, [ORGANIZATION] staff shall run a conflicts check in [SYSTEM] to determine whether representation of the prospective client would present a conflict of interest. In checking for conflicts in [SYSTEM], [ORGANIZATION] staff shall search for parties' names as well as variations in those names and spellings. If representing the prospective client would present no conflict of interest, [ORGANIZATION] may agree to the representation. If the representation would present a conflict of interest under ORPC 1.7(a) or 1.9, [ORGANIZATION] staff must determine whether that conflict is waivable under ORPC 1.7(b) or 1.9. If the conflict cannot be waived, [ORGANIZATION] shall not accept the representation. If the conflict can be waived, [ORGANIZATION] may accept the representation only if all relevant parties consent to the waiver in writing. If any party declines to waive the conflict, [ORGANIZATION] may not accept the representation or provide the prospective client any legal advice. Where [ORGANIZATION] does not accept a prospective client based on a conflict of interest, [ORGANIZATION] staff shall clearly document that the representation was declined in [SYSTEM] and send a letter of nonengagement to the prospective client explaining that [ORGANIZATION] does not represent the prospective client and that the prospective client should seek independent counsel. The results of every conflict check shall be recorded in [SYSTEM] regardless of whether the prospective representation was accepted or declined.

In addition to performing a conflicts check before accepting a prospective client, [ORGANIZATION] shall circulate a list of new clients to all staff on a weekly basis. Staff members shall promptly review the list for potential conflicts of interest and, should

not be subject to discipline for words uttered in debate in either house of the Oregon Legislative Assembly or for any speech or debate in either house of the United States Congress. (f) A member of a lawyer-legislator's firm shall not be subject to discipline for representing a client in any claim against the State of Oregon provided: (1) the lawyer-legislator is screened from participation or representation in the matter in accordance with the procedure set forth in Rule 1.10(c) (the required affidavits shall be served on the Attorney General); and (2) the lawyer-legislator shall not directly or indirectly receive a fee for such representation.



they identify a potential conflict of interest, immediately notify the new client's legal representative. The legal representative shall take appropriate action in accordance with the ORPC.

Once a client has been accepted for representation, the legal representative at [ORGANIZATION] charged with representing the client is responsible for identifying conflicts of interest that may arise during the course of representation. Legal representatives shall take particular care to monitor potential conflicts of interest where the representation involves multiple parties—e.g., a parent and child, spouses, etc.—as conflicts of interest are likelier to arise under these circumstances. If a conflict arises during the course of representation, the legal representative must determine whether that conflict is waivable under ORPC 1.7(b). If the conflict cannot be waived, the representative must withdraw from the representation under the procedures established by ORPC 1.16. The representative must clearly document the withdrawal in [SYSTEM]. If the conflict can be waived, the representative must ask for the parties' consent to waiver. If all relevant parties consent to waive the conflict, such waiver must be reflected in writing and recorded in [SYSTEM], and the representation can proceed. If any party declines to waive the conflict, the representative must withdraw from the representation under the procedures established by ORPC 1.16.

Any doubts regarding conflicts of interest shall be resolved in accordance with the ORPC.