

# Professional Responsibility:

## Quiz 2: Conflicts

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### Answers & Explanations

1. Attorney is a practicing lawyer in private practice. Attorney also teaches law school and undergraduate classes as an adjunct professor at Piedmont University. Two high school seniors have asked Attorney to represent them in a lawsuit against Piedmont University. The students allege that the university did not admit them to the undergraduate program because of race discrimination. Assuming the other conditions for waiver of conflict are satisfied, may Attorney represent the student in their suit against the university?
- A. Yes, provided she obtains informed consent, confirmed in writing, from the university.
  - B. Yes, provided she obtains informed consent, confirmed in writing, from the students.**
  - C. Yes, provided she obtains informed consent, confirmed in writing, from the students and the university.
  - D. No, because the representation involves the assertion of claims against the university.

Answer B is correct. There is a significant risk that Attorney's responsibilities to the university would materially limit her representation of the students in a suit against the university. For example, she might be concerned that the university would stop allowing her to teach classes. Under these facts, there might be a serious question whether it is reasonable for Attorney to believe she can nonetheless provide competent and diligent representation; but the question tells you to assume that requirement is satisfied. The only informed consent required is from the students, who are the clients.

Answers A, C, & D are incorrect because the university is not Attorney's client (neither in this case nor otherwise), but her employer. It's possible that the university might have a rule requiring its consent to a faculty member representing someone in a suit against the university. But that wouldn't be a matter governed by the Rules of Professional Conduct.

2. Suspect and Accomplice are charged with burglary (a felony). They both want Lawyer to represent them in their criminal trial. Lawyer reviews the police report, which indicates that Suspect may have instigated the crime. Suspect has two prior felony convictions. Under the state's repeat offender statute, Suspect faces a minimum sentence of 30 years if he is convicted of a third felony. Accomplice has one prior conviction, for which he received a suspended sentence, conditioned on having no additional felony convictions within the

next three years. Is it proper for Lawyer to represent them both in this case?

- A. Yes, as long as each client gives informed consent, confirmed in writing.
- B. Yes, because the charges arise out of the same incident.
- C. Yes, as long as the two will not give conflicting testimony.
- D. No, because joint representation in this case presents a non-waivable conflict.**

Answer D is correct. Joint representation of co-defendants in a criminal case presents a conflict under Rule 1.7(a)(2), because there is an inherent risk that the lawyer's representation of one client will be materially limited by the lawyer's responsibilities to the other client. For example, the prosecutor may offer one co-defendant a favorable deal in exchange for testifying against the other. This conflict is nearly always non-waivable, because it will seldom if ever be reasonable for the lawyer to believe they can competently and diligently represent both clients. In this problem, for example, Suspect faces life in prison if he is convicted of any felony or misdemeanor, while Accomplice faces having to serve out the suspended sentence only if he is convicted of a felony. The prosecution might offer Accomplice a deal under which Accomplice pleads guilty of a misdemeanor in exchange for testifying against Suspect. Lawyer would not be able to represent both clients competently and diligently in that event.

Answer A is incorrect, because the clients' informed consent is not sufficient to waive a conflict where the lawyer cannot reasonably believe they could competently and diligently represent both clients.

Answer B is incorrect, because this fact is simply irrelevant to the standards for waiver of conflicts.

Answer C is incorrect, because the underlying conflict here is not predicated solely on the possibility of conflicting testimony (though that would also create a conflict), but on the inconsistent interests of the two clients in possible plea deals.

3. Lawyer represents Able in a suit against her neighbor Baker. The suit asserts a claim for trespass, alleging that Baker erected a backyard shed that sits partially on Able's property. Several years ago, Lawyer represented Baker in a workers' compensation claim against her employer. That matter was ended with Baker being awarded worker's compensation benefits. Lawyer and Baker have not been in contact since. May Lawyer represent Able in the suit against Baker?

- A. Yes, because the two matters are unrelated.**
- B. Yes, because Lawyer obtained a satisfactory result for Baker.
- C. No, because the representation of Able would be adverse to Baker.
- D. No, unless Lawyer obtains informed consent, confirmed in the writing, from both Able and Baker.

Answer A is correct. Baker is Lawyer's former client, so there is a conflict only if the two matters are the same or substantially related. Even under the broadest definition of "substantially related", the facts here suggest no connection at all between the two matters, and there's nothing to suggest Lawyer has any information that would have been obtained in the prior workers' comp case that would materially advance Abel's position (or impair Baker's) in the current property dispute.

Answer B is incorrect, because this fact is completely irrelevant to the existence of a conflict or its waivability.

Answer C is incorrect. If Abel and Baker were both current clients, this would present a conflict under Rule 1.7(a). But since Baker is a former client, there is no conflict under Rule 1.9(a), because the two matters are not the same or substantially related.

Answer D is incorrect. First, under Rule 1.9(a), it is only the former client who must give informed consent to a representation that presents a conflict. Second, since there is no conflict at all under Rule 1.9(a), there is nothing that requires the former client's consent.

4. Attorney & Lawyer are partners in a small law firm. Attorney has represented Motorworks, Inc., an auto manufacturer, in all its litigation matters for many years. She is currently defending the company in a lawsuit brought by Driver, the owner of a Motorworks auto, who was blinded when an airbag spontaneously exploded while he was driving. In that same incident, Driver's car hit Walker, a pedestrian who was seriously injured in the collision. Walker has asked Lawyer to represent him in a suit against Driver (for negligence) and Motorworks (for products liability). Attorney and Lawyer both believe they would be able to provide competent and diligent representation to their respective clients. Is it proper for Lawyer to represent Walker.

A. Yes, provided each lawyer reasonably believes she can provide competent and diligent represent to their client, and each client gives informed consent in writing.

B. Yes, provided Attorney and Lawyer agree not to communicate or share documents relating to the matter.

C. No, unless each client gives informed consent, confirmed in writing.

**D. No, because the representation presents a non-waivable conflict.**

Answer D is correct. The interests of the two clients (Motorworks & Walker) are directly adverse. Under Rule 1.7(a)(1), it would be a conflict for either Attorney or Lawyer to represent both clients. Under Rule 1.7(b)(3), that conflict is non-waivable, because the dual-representation would involve the assertion of a claim by one client (Walker) against another (Motorworks) in the same action. Under Rule 1.10, the conflicts of each partner are imputed to the other. So there is still a conflict under 1.7(a)(1), and it is still non-waivable under 1.7(b)(3), even if Attorney represents one client (Motorworks) and Lawyer represents the other (Walker).

Answer A is incorrect. Even if Attorney and Lawyer could satisfy this requirement for waiver of the conflict, Rule 1.7(b)(3) would still make this conflict non-waivable.

Answer B is incorrect. Under the Model Rules, screening is not sufficient to cure a conflict involving concurrent representation of two clients asserting claims against each other in the same action.

Answer C is incorrect. Where Rule 1.7(b)(3) is not satisfied, informed consent is not effective to waive a conflict.

5. Attorney has represented Client in various legal matters for many years. The two have also become friends, based on their shared interest in bluegrass music. Client asks attorney to draft a new will, under which most of his property will go to his son (his only living relative). Client tells Attorney he'd like to leave his collection of rare early bluegrass records (valued at more than \$10,000) to Attorney, as a token of appreciation for his years of service and friendship. May attorney accept this gift?
- A. Yes, because attorney did not solicit the gift.
  - B. Yes, as long as Attorney reasonably believes Client is not incapacitated.
  - C. No, unless another lawyer drafts the will instead of Attorney.**
  - D. No, because a lawyer may not accept a substantial gift from a current client.

Answer C is correct. A lawyer may accept an unsolicited gift from a client, but may not draft the will or other instrument conveying the gift. Attorney should explain this to Client and instruct Client to have another lawyer draft the will.

Answer A is incorrect. Even though the gift was unsolicited, Attorney may not draft the will conveying that gift.

Answer B is incorrect. This fact is irrelevant to the restrictions on gifts from clients under Rule 1.8(c).

Answer D is incorrect. Rule 1.8(c) prohibits a lawyer from soliciting a substantial gift, but not from accepting an unsolicited gift (substantial or otherwise), as long as the lawyer does not prepare the instrument conveying the gift.