

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually, and
L.M., individually,

Defendant,

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISQUALIFY

Counter-Plaintiff, Bradley J. Edwards, by and through his undersigned attorneys, files this Memorandum of Law in support of his Motion to Disqualify Attorney Fred Haddad, from further participation in this proceeding.

BACKGROUND AND FACTS SUPPORTING DISQUALIFICATION

Edwards represented and continues to represent victims of sexual assault at the hands of Epstein in civil actions filed against Epstein and in a pending crime victim's rights act claim in Federal District Court. During the time of this representation, Edwards was recruited by Russell Adler and hired by the Rothstein Rosenfeldt Adler firm ("RRA"). Edwards brought the Epstein files with him to RRA. On or around November 1, 2009 RRA was closed as a result of Rothstein's (the president of RRA) involvement in a massive Ponzi scheme. While at RRA, Edwards worked in the personal injury tort division. His supervisor was Russell Adler, head of the division. During this time frame Edwards had numerous discussions and meetings at which Adler was present regarding the Epstein cases. These discussions involved strategy and

confidential information protected by the work product and attorney-client privileges, information for which Edwards has been obliged to claim privilege in the instant case to protect the interest of his clients. In support, Mr. Edwards testified as follows before this Court:

Russell Adler knew what was going on with the cases, we had Epstein meetings where myself, former Judge Bill Berger, Russ Adler, other members of the firm would talk about Epstein, talk strategy about Epstein. Our mental impressions were out on the table, so to speak; discovery, strategy was discussed. Not only that, the intimate details of our clients was discussed. Things that all fall into the parameter of work product privilege and attorney-client privilege, and that's just in-person communication. See hearing transcript from October 25, 2012 at p. 12.¹

Additionally, there was a computer program at RRA called Q Task in which attorneys could and did exchange electronic communications about strategy and details surrounding their cases. Russell Adler had access to all the information posted on Q Task about the Epstein cases.

But it is basically a virtual boardroom for attorneys to communicate specifically back and forth, have meetings in a virtual manner so that you can discuss cases, details of cases, strategy on cases. And one of the projects -- actually, every case, I think, had a project within Q Task. Certain people who would give input or input on cases were invited to the project. Both myself and Russ Adler were on those projects, which means everything that I posted or Bill Berger, for instance, posted, or Russ Adler posted -- I believe those were the main participants in that project -- would have access to literally everything that was in that communication device. See Exhibit A at p. 13.

Adler's deposition testimony in this action confirms that he was privy to confidential information about the Epstein cases while Edwards was at RRA.²

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2 I want to clarify a couple of things. Mr.
3 Edwards has testified at this deposition -and I have
4 it in the room if you want to see it .that he
5 discussed the Epstein cases with you on a regular
6 basis, is that a true statement?
7 A In a general sense, yes. Specifically, as
8 I said, there were issues that might have come up
9 where he would ask me about or bounce things off of
10 me.
11 And if I were to ask you those issues, you
12 would say it's work-product?

¹ The pertinent portions of the Hearing transcript are attached as Exhibit A.

² The pertinent portions of Adler's deposition transcript are attached as Exhibit B.

13 Correct, Although, I will tell you that my
14 answer applies to all of his cases and everyone
15 else's cases. I try to keep an overall understanding
16 of what's going on with people's cases, because I
17 always wanted to help and see where they were.

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10 I personally worked on my own cases every
11 day. So, did I do some work on the Epstein case?
12 I'm sure I did. I told you the extent of what I
13 remembered. But you gotta also remember that, I was
14 inquisitive about every lawyer's cases in my group
15 because I was a real take-charge person from an
16 administrative viewpoint just about making sure cases
17 were being litigated, that the lawyers had anything
18 they needed to do, that they were happy, that they
19 were well-staffed, and things like that.
20 Do you know whether the Epstein cases were,
21 I'm not sure of the verb for this, whether that QTASK I
22 was used for any of the Epstein cases?
23 A I'm sure it was used to some extent.

After the discovery of Rothstein's Ponzi scheme and the demise of RRA, Edwards formed a new law firm and continued representing the plaintiffs who had filed civil actions against Epstein. Epstein quickly took advantage of the situation and in an attempt to intimidate Edwards and his clients, initiated this action against Edwards, Rothstein and one of Edwards' clients for abuse of process. Epstein essentially alleged that Edwards joined Rothstein in the abusive prosecution of sexual assault cases against Epstein to "pump" the cases to Ponzi scheme investors. These claims hinged on the premise that Edwards was a knowing participant in the Ponzi scheme run by Rothstein. Edwards responded by filing a counterclaim against Epstein for abuse of process. Years into the prosecution and on the eve of a hearing on the Edwards' Motion for Summary Judgment, Epstein voluntarily dismissed his claim. Nevertheless, in order to prevail on his abuse of process claim, Edwards will need to establish that Epstein's claim was baseless. In other words he will have to prove that he had no knowledge of the Ponzi scheme at

RRA and that his actions in prosecuting the claims against Epstein had the legitimate purpose of lawfully advancing his clients' interests.

After the demise of RRA, in early November 2009, Herbert Stettin was appointed as bankruptcy trustee of the RRA firm. In November, Russell Adler hired Fred Haddad to represent him after he resigned from RRA. Mr. Haddad represented Adler in a clawback claim by the RRA trustee. The subject matter of that representation was substantially related to matters at issue in this proceeding including the legitimacy of the prosecutions against Mr. Epstein (about which Mr. Adler had knowledge given his access to and participation in those cases while Edwards was with RRA) and the extent to which members of the RRA firm, other than Rothstein, knew of and participated in the Ponzi scheme orchestrated by Rothstein. Furthermore, during Mr. Haddad's representation of Adler, Rothstein implicated Adler as a co-conspirator and Mr. Adler was and perhaps still is under criminal investigation. The trustee in the clawback action made similar allegations that Adler was a knowing Ponzi scheme participant, and Haddad represented him. Despite his representation of Adler in a substantially related matter (the clawback case and any investigation with respect to Adler's alleged involvement in the Ponzi scheme) and despite the fact that Adler, his client, will be an important witness in this case, Adler is expected to support Edwards' assertions of lack of knowledge of the Ponzi scheme, the legitimacy and propriety of the prosecution efforts against Epstein, and Edwards' stellar abilities and reputation as a litigator. Mr. Haddad has entered an appearance as co-counsel on behalf of Epstein in the instant case. His representation of both Epstein and Adler presents a number of

conflicts which support the entry of an Order disqualifying Mr. Haddad from further involvement in this matter.

First there is no doubt based upon the testimony of both Adler and Edwards that Adler had access to confidential information concerning the prosecution of the civil claims against Epstein. Adler was deposed in this action by Epstein and Mr. Haddad represented him at the deposition. Adler, when questioned by Epstein's lawyer invoked the work product privilege with respect to communications between himself and Edwards while Edwards was at RRA. Just a few examples from the transcript are set forth below.

p.7

9 The first one: Did you look to see if you
10 had documents evidencing any and all written
11 communications between you and Bradley Edwards
12 regarding any pending and/or contemplating litigation
13 against Jeffrey Epstein from September 2008 to the
14 present?
15 A Let me save you some time and paint with a
16 broad brush. Any communications between myself or
17 Brad Edwards or I see you even have Scott Rothstein
18 listed in another one of these requests during the
19 time that I was employed by the RRA firm is
20 work-product privilege and I invoke that privilege
21 and I will refuse to answer any questions concerning
22 any such communications. That privilege extends to
23 any of these documents that you're requesting that
24 fits within those parameters.

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7 A Fine. Look, did I have discussions about
8 the Epstein case with Brad Edwards? I'm sure I did.
9 What were those particular discussions about, to the
10 extent that I had them? That's work-product, as I
11 understand the work-product doctrine.

In other words Adler refused to divulge information to Epstein's lawyer on the basis of privilege while being represented by Mr. Haddad, and now Mr. Haddad represents Epstein. Mr. Haddad is asking Edwards and this Court to trust that Adler, Mr. Haddad's client, has not and will not divulge confidential information. Mr. Haddad is asking this Court and Mr. Edwards to

trust that Mr. Haddad has never asked his client about his involvement in the Epstein cases or the involvement of RRA lawyers in the Ponzi scheme, despite his representation of Adler in the clawback action and during the time frame that Adler was being implicated as a co-conspirator in the Ponzi scheme. Simply put, to allow Mr. Haddad to represent Epstein is tantamount to allowing Adler, a party with knowledge of confidential information that has been withheld from Epstein, to represent Epstein.

Aside from the fact that Mr. Haddad, through his representation of Adler, has access to confidential information that may be beneficial to Epstein in this case, Mr. Haddad has other conflicts as well which are set forth below.

1. Despite the dismissal of Epstein's claims against Edwards, Edwards needs to prove that those claims were baseless. Edwards has to prove that contrary to Epstein's allegations, Edwards had no knowledge of or participation in the Ponzi scheme. The broader the existence of knowledge of the scheme, the less likely it becomes that Edwards had no knowledge. Knowledge on Adler's part helps Epstein, but Haddad is ethically precluded from suggesting that Adler as the head of the firm's litigation department had knowledge. If Adler had no knowledge of the scheme it is far less likely that Edwards had knowledge. So the question becomes, is Mr. Haddad, on behalf of his new client Epstein, prepared to concede that Adler had no knowledge of and no participation in the Ponzi scheme? Unless that issue is eliminated by stipulation, Mr. Haddad who was defending and continues to defend Adler against allegations of his involvement, cannot possibly participate in a case in which his current client is suggesting Adler was involved.
2. As Edwards' supervisor, Adler will be called to support the propriety of all of Edwards' prosecution efforts including that discovery efforts were well justified to meet the burden of proof necessary to hold the serial child molester Haddad is now representing responsible for criminal assaults. Is Mr. Haddad prepared to concede those points and not challenge his own client on cross examination, and can he ethically do so?³

³ Mr. Haddad suggested at the 10/25/12 evidentiary hearing that his co-counsel could cross examine Adler. However, this "Chinese wall" type of approach does not alleviate Edwards' concerns as Mr. Haddad could simply tell his co-counsel what to ask. Furthermore, Florida does not permit the construction of Chinese walls to avoid conflicts. See R. Regulating Fla. Bar 4-1.10(b); *Birdsall v. Crowngap Ltd.*, 575 So.2d 231, 232 (Fla. 4th DCA 1991); *Edward J. DeBartolo Corp. v. Petrin*, 516 So.2d 6, 7 (Fla. 5th DCA 1987).

3. Adler is in a position to support Edwards' damage claims with testimony about the quality of Edwards' legal skills and the monetary value of his time. Part of the damage theory is that Edwards is entitled to be compensated for the value of the time he was obliged to devote to defending himself against Epstein's maliciously motivated claims. Is Mr. Haddad prepared to concede those issues and waive any cross examination of or extrinsic challenge to Adler's testimony on those points?

4. Adler is also uniquely positioned to discuss the damage Edwards suffered to his reputation, and the emotional impact of having been falsely accused of being a knowing participant in one of history's most massive Ponzi schemes since Adler not only directly observed Edwards during the relevant time periods, but shared the experience with him. He was a passenger in the very same horrific "train wreck" and can describe the mental anguish shared by those who became the focus of suspicion. How could Mr. Haddad ethically challenge this testimony from his own client?

LEGAL AUTHORITIES IN SUPPORT OF DISQUALIFICATION

Counter-Plaintiff readily agrees that disqualification of a party's chosen counsel is a remedy that should be resorted to sparingly. Edwards also acknowledges that the right of a party to choose his or her attorney is deeply engrained in Florida jurisprudence. However, that right is not unlimited. Disqualification is appropriate where a party (Epstein) obtains an unfair informational advantage by virtue of their counsel (Haddad) having access to privileged or confidential information. The Fifth District recently examined this issue in *Garfinkel, P.A. v. Mager*, 57 So. 3d 221 (Fla. 5th DCA 2010). Mager served as managing partner of the Garfinkel law firm. Mager was terminated and subsequently sued the firm. The parties entered into a settlement agreement in which Mager agreed that in the future he would not represent or assist any client in litigation against the Garfinkel firm. Later, Garfinkel sued Mager for breach of the settlement agreement. Mager argued that the agreement was void as contrary to public policy because it improperly limited the freedom of potential clients to choose Mager as their lawyer.

The Fifth District held that the provision did not violate public policy and noted that a party does not have the right to an attorney possessing confidential information of the adversary. *Id.* at 224.

The Court further noted that:

“the Rules Regulating the Florida Bar affirmatively restrict attorneys with “inside” knowledge from using it for the gain of other clients. *See generally*, R. Regulating Fla. Bar 4–1.6 (confidentiality of client information); 4–1.7 (conflict of interest; current client) 4–1.8 (conflict of interest; prohibiting use of client information to disadvantage of client); 4–1.9 (conflict of interest; former client).”⁴

Id. The Court also relied upon and discussed *Greene v. Greene*, 391 N.E. 2d 1355 (1979) in which a plaintiff brought an action for breach of fiduciary duty against the firm of Finley Kumble. Two members of the law firm representing the plaintiff had been partners at Finley Kumble at the time during which some events relevant to plaintiffs claims had occurred. The defendant law firm moved to disqualify the plaintiff’s lawyers arguing that through the prior employment at defendants’ firm, attorneys at the firm representing the plaintiff had acquired confidential information related to the plaintiff’s claim. The court found that disqualification was required and noted that the former partners of the defendant firm owed it a fiduciary duty similar to that an attorney owes its client. *Id.* at 225 (citing *Greene*). The *Greene* Court went on to note that even though a litigant may normally select the attorney of their choosing, an attorney may not accept employment in violation of a fiduciary relationship. *Id.* The same reasoning should apply in this case.

Another illustrative case is *Frye v. Ironstone Bank*, 69 So. 3d 1046 (Fla. 2d DCA 2011). In *Frye*, a bank brought a deficiency action against the personal guarantor of a bank loan. *Frye*,

⁴ The text of these rules is attached as Exhibit C for the Court’s reference.

the guarantor, filed a motion to disqualify the law firm representing the bank. The law firm had previously represented Frye's former lawyer in a legal malpractice action, and as a result had access to confidential communications between Frye and his former lawyer. The Court held that an unfair informational advantage accruing to law firm through its representation of Frye's former lawyer in a legal malpractice action disqualified it from further representing the bank in an action against Frye. *Id.* at 1050. It is important to note that the lawyer representing the bank was not the same lawyer which represented Frye's former lawyer. *Id.* at 1048-49. The Second District also held that the existence of an attorney-client relationship between Frye and his former lawyer gave rise to an irrefutable presumption that the lawyer obtained confidential information from Frye, thereby giving the law firm now representing that lawyer an unfair informational advantage against Frye in the deficiency action in which it also represented the adversary bank. *Id.* at 1052. Likewise in this case, the existence of an attorney-client relationship between Haddad and Adler gives rise to an irrefutable presumption that Haddad obtained confidential information from Adler despite Haddad's protests to the contrary. Additionally, the Second District noted that the ordinary conflict of interest analysis is not applicable to cases of disqualification based on an unfair informational advantage.⁵ *Id.* at 1053. Thus, the *Frye* Court held that there was no need to make an evidentiary showing that the matters

⁵ That analysis normally requires the movant to establish that an attorney-client relationship existed and that the matter subsequently represented the interest adverse to the former client was the same or substantially related to the matter in which it represented the former client.

were substantially related. *Id.* Thus, Haddad's argument that Edwards has not made such a showing is simply not applicable.⁶

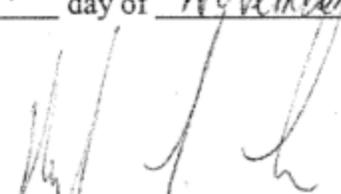
Finally, in *Armor Screen Corp. v. Storm Catcher Inc.*, 709 F.Supp.2d 1309 (S.D. Fla. 2010), the holder of a patent for a hurricane protection screen brought an action against competitors, alleging infringement and unfair trade practices. The defendant competitors moved to disqualify the plaintiff's counsel because a lawyer from the firm representing the plaintiff had previously discussed the case with the defendants as a potential expert. The District Court adopted the report and recommendation of the Magistrate Judge which held that the attorney who had discussed case as a potential expert for the defendant competitors, but was never retained, would be disqualified from serving as counsel for holder of the patent in the same infringement case, despite the attorney's insistence that he did not obtain any confidential information when he was approached as a potential expert. The Magistrate determined that Fla. Bar Rule 4-1.9 (conflict of interest; Former Client) prohibited the attorney who had been privy to confidential information over the course of his discussions with competitors from now representing the patent holder. *Id.* at 1320-22. Importantly, the magistrate noted that "there is a real **risk that Schneider has confidential information that could be unfairly used** against Defendants." *Id.* at 1322 (emphasis added). A similar risk exists in this case which warrants disqualification, despite Mr. Haddad's insistence that no confidential disclosures have been made. First, there is an irrefutable presumption that disclosure of confidential and privileged information has been made

⁶ It should be noted that Edwards contends that such a showing has been made. Haddad does not dispute that an attorney client relationship exists between himself and Adler. Furthermore, it is clear that issues in the clawback lawsuit and with respect to investigation of Adler as an alleged co-conspirator in the Ponzi scheme directly overlap with many of the issues raised in this case.

based upon the attorney –client relationship between Mr. Haddad and Adler. *See Frye, supra.*
Second, even if one accepts Haddad and Adler’s contrary assertions, Edwards has clearly established that there is a risk that confidential information could be unfairly used against Edwards by Epstein in the future in his defense against Edwards’ counterclaim.

WHEREFORE, for the reasons set forth above, Counter-Plaintiff, Bradley J. Edwards, requests this Court to enter an Order granting his Motion to Disqualify Attorney Fred Haddad, from further participation in this proceeding.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 19th day of November, 2012.



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1 A Yes.

2 Q Now, practically, if he's a co-counsel, I
3 guess he's also representing Mr. Epstein, too?

4 A Yes.

5 Q And Mr. Haddad is representing Mr. Epstein,
6 too?

7 A Right.

8 Q Do you have a concern at all that all
9 Mr. Haddad has got to do is say Mr. Goldberger, why
10 don't you ask him this, don't ask this, that they can
11 communicate things that you have asserted as
12 privileged in our case that he knows from --

13 MR. GOLDBERGER: Judge --

14 THE COURT: This is not closing
15 argument, counsel. Just ask the question.

16 MR. LEWIS: I apologize, Judge. I want
17 to get to the issue.

18 THE COURT: Ask your question.

19 BY MR. LEWIS:

20 Q Are you concerned about that? And can you
21 please explain to the court what your concern is?

22 A My concern is that any privileged information
23 that Mr. Haddad wants, if we invoke a privilege all he
24 has to do is ask Russ Adler. That's my concern.

25 That's it.

PALM BEACH REPORTING



(561) 471-2995

1 MR. LEWIS: Thank you, Judge. I don't
2 have any other questions for Mr. Edwards
3 right now.

4 THE COURT: Cross-examination, sir?

5 MR. HADDAD: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. HADDAD:

8 Q Mr. Adler is a very close friend of yours,
9 correct?

10 A That's true.

11 Q And Mr. Adler is the one who brought you
12 into RRA, correct?

13 A That's true.

14 Q And as a matter of fact, if Mr. Adler were
15 to testify for you, he would be a character witness,
16 would he not?

17 A I would think so.

18 Q He considers you one of the finest lawyers
19 around, does he not?

20 A I believe so.

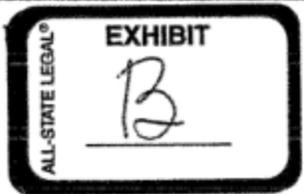
21 Q He's expressed that to a number of people?

22 A I believe so.

23 Q Do you think that Mr. Adler is going to be
24 a witness adverse to you?

25 A I think that --

Page 121	Page 123
<p>1 I mean in any way, just a hand shake in the lobby – 2 A No, I understand. 3 Q – someone named Thane Ritchey?</p>	<p>1 A I have never seen it, that's correct. 2 Q I want to clarify a couple of things. Mr. 3 Edwards has testified at his deposition - and I have</p>
<p>4 A Thane, who? 5 Q Thane Ritchey. And it sounds like a movie 6 star or something, but he's a guy. 7 A No. 8 Q I think it's your testimony this morning 9 that you never knew that Scott Rothstein was 10 purporting to sell structured settlement investments, 11 is that correct? 12 A I always knew that Scott invested with 13 other people, but I never knew that other people 14 invested with Scott. 15 Q Did Scott, to your knowledge, or any of the 16 investments that he said he was making, were they in 17 structured settlements? 18 A He never said that phrase to me, 19 "structured settlements" and he never got real 20 specific with me about his investments other than 21 those that were just outwardly known to people. 22 Q Like the watches? 23 A The watch company, the Vodka company, you 24 know, houses that he owned, cars. 25 Q Tangible things?</p>	<p>4 it in the room if you want to see it - that he 5 discussed the Epstein cases with you on a regular 6 basis, is that a true statement? 7 A In a general sense, yes. Specifically, as 8 I said, there were issues that might have come up 9 where he would ask me about or bounce things off of 10 me. 11 Q And if I were to ask you those issues, you 12 would say it's work-product? 13 A Correct. Although, I will tell you that my 14 answer applies to all of his cases and everyone 15 else's cases. I try to keep an overall understanding 16 of what's going on with people's cases, because I 17 always wanted to help and see where they were. 18 Q He also testified - and, again, I can show 19 it to you if you like. I brought it so it would be 20 convenient - that you worked on the Epstein files, is 21 that a true statement? 22 MR. KING: Objection to form. 23 A Well, it's true to the extent that I 24 testified to today. If there is anything else 25 specifically that he said, I'd like to know about it.</p>
Page 122	Page 124
<p>1 A The restaurant. Just things that he made 2 it known about. Gibraltar Bank towards the end, 3 things like that. Everybody knew that he invested in 4 those things, but he never sat down and told me the 5 specifics of all of his investments or other 6 investments that weren't widely known. 7 Q Did he ever invite you to join him in any 8 of those investments? 9 A Did he ever invite me? Early on in 2005, I 10 think it was, it might have been 2006, there was a 11 townhouse project. I think I spoke about this in my 12 Trustee deposition. There was a townhouse project 13 that had to be completed and he needed money, or 14 whatever. And he said I would get a lot of money 15 back. I actually took out a home equity line on my 16 house for \$100,000 and I gave him a check for the 17 \$100,000. 18 So, the answer to that extent is yes. 19 That's the only thing that I was ever really invited 20 to participate in. And I lost money on it, by the 21 way. I got back about 80,000 over time, so I was out 22 about 20 grand. 23 Q I think you testified earlier that you had 24 not ever seen Brad Edwards' deposition that he had 25 given in this case?</p>	<p>1 Because you gotta remember that, I was responsible 2 for overseeing all of the cases in my division, over 3 nine lawyers, including class-action, mass tort, 4 general liability, premises liability, medical mal. 5 All of those things. So when you ask me those 6 questions, you know, that's one of the reasons why – 7 And, oh, by the way, I had a very large caseload 8 myself. 9 Q Yes. 10 A I personally worked on my own cases every 11 day. So, did I do some work on the Epstein case? 12 I'm sure I did. I told you the extent of what I 13 remembered. But you gotta also remember that, I was 14 inquisitive about every lawyer's cases in my group 15 because I was a real take-charge person from an 16 administrative viewpoint just about making sure cases 17 were being litigated, that the lawyers had anything 18 they needed to do, that they were happy, that they 19 were well-staffed, and things like that. 20 Q Do you know whether the Epstein cases were, 21 I'm not sure of the verb for this, whether that QTASK 22 was used for any of the Epstein cases? 23 A I'm sure it was used to some extent. 24 Q Earlier I did ask you a question - and I 25 think that Mr. King objected and maybe you declined</p>



Page 5	Page 7
<p>1 A What we were talking about?</p> <p>2 Q Yeah.</p> <p>3 A Just the fact that much of what we</p>	<p>1 in the middle of Page 6.</p> <p>2 A I'm looking at it.</p> <p>3 Q Did you search for any documents that you</p>
<p>4 anticipate that you're going to ask is protected by</p> <p>5 the work-product privilege and I told him I would</p> <p>6 invoke it as I see necessary.</p> <p>7 Q Alrighty. Let me get down some basic</p> <p>8 information. Is your full name Russell S. Adler?</p> <p>9 A Yes.</p> <p>10 Q Can I get your current address?</p> <p>11 A I'm presently residing at 2200 South Ocean</p> <p>12 Lane in Fort Lauderdale.</p> <p>13 Q Are you currently employed?</p> <p>14 A Self-employed.</p> <p>15 Q What is the name of your business?</p> <p>16 A Russell S. Adler, P.A.</p> <p>17 Q And where is your business address?</p> <p>18 A 401 East Las Olas Boulevard, Suite 1400.</p> <p>19 Q How long have you been with that firm as a</p> <p>20 self-employed attorney?</p> <p>21 A Since November 2009.</p> <p>22 Q What's your date of birth, sir?</p> <p>23 A 11/26/61.</p> <p>24 Q Are you taking any medications or anything</p> <p>25 that would impair your ability to testify truthfully</p>	<p>4 believe would be responsive to these requests?</p> <p>5 A I'm reading it. Hold on.</p> <p>6 Q Well, let's go through it because it will</p> <p>7 save time I think.</p> <p>8 A Go ahead.</p> <p>9 Q The first one: Did you look to see if you</p> <p>10 had documents evidencing any and all written</p> <p>11 communications between you and Bradley Edwards</p> <p>12 regarding any pending and/or contemplating litigation</p> <p>13 against Jeffrey Epstein from September 2008 to the</p> <p>14 present?</p> <p>15 A Let me save you some time and paint with a</p> <p>16 broad brush. Any communications between myself or</p> <p>17 Brad Edwards - or I see you even have Scott Rothstein</p> <p>18 listed in another one of these requests - during the</p> <p>19 time that I was employed by the RRA firm is</p> <p>20 work-product privilege and I invoke that privilege</p> <p>21 and I will refuse to answer any questions concerning</p> <p>22 any such communications. That privilege extends to</p> <p>23 any of these documents that you're requesting that</p> <p>24 fits within those parameters.</p> <p>25 Q Well, let me --</p>
Page 6	Page 8
<p>1 today --</p> <p>2 A No.</p> <p>3 Q -- or impair your memory?</p> <p>4 Did you see a Notice of Taking Deposition</p> <p>5 with an attached subpoena for this deposition?</p> <p>6 A I saw the subpoena. I don't know that I</p> <p>7 ever saw the notice.</p> <p>8 Q Did you bring any documents with you today?</p> <p>9 A No.</p> <p>10 Q Did you understand the subpoena to request</p> <p>11 that you bring documents?</p> <p>12 A Please show it to me.</p> <p>13 Q I will.</p> <p>14 A I may have read it. I don't recall what it</p> <p>15 says as I sit here now.</p> <p>16 (WHEREUPON, the document was marked as an</p> <p>17 Plaintiff's Exhibit No. 1 for Identification and</p> <p>18 attached).</p> <p>19 A I guess you want me to look at the duces</p> <p>20 tecum?</p> <p>21 Q Please. Do you recall seeing that, sir?</p> <p>22 A Briefly.</p> <p>23 Q Can you tell me on page -- Well, it's</p> <p>24 numbered Page 6 because it was numbered I guess as an</p> <p>25 attachment to a notice, but where it says "requests"</p>	<p>1 A As to Number 1, there is absolutely nothing</p> <p>2 concerning this from, let's say, November or October</p> <p>3 31st, 2009 through the present.</p> <p>4 As to anything from 2008 through November</p> <p>5 of 2009, that would be the time that I was employed</p> <p>6 by RRA and you are not entitled to those documents</p> <p>7 if, in fact, they even exist because it's</p> <p>8 work-product privilege.</p> <p>9 Q Well, let me ask you this question. You</p> <p>10 just said if, in fact, they even exist. What I'm</p> <p>11 asking you is, let's go back to my earlier questions:</p> <p>12 Did you look to see if you have any documents,</p> <p>13 whether or not they would be work-product, for that</p> <p>14 period of time?</p> <p>15 A I don't even have access to those documents</p> <p>16 any more. They're the property of the bankruptcy</p> <p>17 trustee --</p> <p>18 (WHEREUPON, an off-the-record discussion</p> <p>19 was had).</p> <p>20 A First of all, you interrupted me in the</p> <p>21 middle of my answer to the question.</p> <p>22 Q I'm sorry. She barged in.</p> <p>23 A Let me finish.</p> <p>24 MRS. APRIL: How about you read it back?</p> <p>25 (WHEREUPON, the requested testimony was</p>

Page 105	Page 107
<p>1 don't even know if that matters to you. That's not 2 the kind of detail that I would have information 3 about.</p>	<p>1 Q Do you know if Jeffrey Epstein was at any 2 time under surveillance with respect to persons sent 3 by your firm?</p>
<p>4 Q So if there was a company that was formed, 5 say, Blue Line Investigations, did you ever hear of 6 that?</p>	<p>4 A I have no idea. 5 Q Did you ever meet with any of the 6 plaintiffs in the cases that Mr. Edwards brought over 7 that were against Jeffrey Epstein?</p>
<p>7 A I've heard of it.</p>	<p>8 A I said "hello" to one of them in the lobby 9 one time. I don't remember her name. I remember she 10 was one of Brad's clients. But that was it, "Hi, how 11 are you? Nice to meet you."</p>
<p>8 Q Do you know if that was a company formed by 9 Scott Rothstein or others at his direction?</p>	<p>12 Q What about with their family members or 13 parents?</p>
<p>10 A I don't know who formed it.</p>	<p>14 A Never met them.</p>
<p>11 Q But did Ken Jenne and Mike Fisten have 12 offices at the firm?</p>	<p>15 Q Did you ever tell anyone outside of the 16 firm -- Well, let me rephrase that.</p>
<p>13 A There was an office that Ken Jenne had at 14 some point. I don't know if Fisten had his own 15 office.</p>	<p>17 Did you ever tell anyone outside of the 18 firm or within the firm in a non-privileged 19 situation, meaning not speaking to a client, that 20 your firm was in the process of suing Jeffrey Epstein 21 and would disclose embarrassing information about Mr. 22 Epstein or his friends, family, colleagues to drive 23 up the settlement value?</p>
<p>16 Q Do you know if any other investigators who 17 were at the firm in 2009 or at some company as far 18 as --</p>	<p>24 MR. KING: Objection. Foundation.</p>
<p>19 A I think Pat Roberts was one of them as 20 well.</p>	<p>25 Predicate.</p>
<p>21 MADAME COURT REPORTER: Can we take a 22 break?</p>	
<p>23 MRS. APRIL: Sure.</p>	
<p>24 (WHEREUPON, a short break took place):</p>	
<p>25 BY MRS. APRIL:</p>	
Page 106	Page 108
<p>1 Q All right. I was asking you about 2 investigators.</p>	<p>1 A Not to my recollection. 2 Q Did Brad Edwards ever say anything like 3 that in your presence?</p>
<p>3 A Yes.</p>	<p>4 A Not to my recollection at all. And even if 5 he did, it would be work-product but --</p>
<p>4 Q Do you know if any of the firm 5 investigators were assigned to work on the Epstein 6 case?</p>	<p>6 Q Do you know what the cause of action is 7 that is brought by Jeffrey Epstein in the case that 8 we're here on today?</p>
<p>7 A I don't know if anyone was assigned to 8 it.</p>	<p>9 A I think I was told in the beginning some 10 kind of RICO claim or something like that. I don't 11 have a specific recollection of it, but I think it 12 was some kind of civil RICO or --</p>
<p>9 Q Do you know if they performed any services 10 with respect to the case?</p>	<p>13 Q Had you ever heard that there was an abuse 14 of process count?</p>
<p>11 A I think so in the general sense, but I 12 don't really recall any details about that.</p>	<p>15 A No, because I had never got into a 16 discussion about what all the counts were with 17 anybody.</p>
<p>13 Q Do you know, did you ever hear of the term 14 "dumpster diving"?</p>	<p>18 Q Have you ever worked on a case that was an 19 abuse of process case?</p>
<p>15 A I have heard of that term.</p>	<p>20 A I don't think so. I have handled false 21 imprisonment cases from time to time and sometimes we 22 use abuse of process as a related tort. So maybe in 23 one or two of those cases, but for the most part, 24 no.</p>
<p>16 Q Do you know what it means?</p>	
<p>17 A Yes.</p>	
<p>18 Q What does it mean?</p>	
<p>19 A When people go through other people's 20 garbage.</p>	
<p>21 Q Do you know if any investigators, either 22 the ones that were named or otherwise, went through 23 Jeffrey Epstein's trash?</p>	
<p>24 MR. KING: Objection. Work-product.</p>	
<p>25 A I have no idea.</p>	<p>25 MRS. APRIL: I think maybe now would be a</p>

C

West's Florida Statutes Annotated Currentness
Rules Regulating the Florida Bar (Refs & Annos)
Chapter 4. Rules of Professional Conduct (Refs & Annos)
4-1. Client-Lawyer Relationship
→ → **Rule 4-1.6. Confidentiality of Information**

(a) Consent Required to Reveal Information. A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

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- (5) to comply with the Rules of Professional Conduct.

(d) Exhaustion of Appellate Remedies. When required by a tribunal to reveal such information, a lawyer may first exhaust all appellate remedies.

(e) Limitation on Amount of Disclosure. When disclosure is mandated or permitted, the lawyer shall disclose no more information than is required to meet the requirements or accomplish the purposes of this rule.

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COMMENT



C

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The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule 4-1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule 4-1.9(c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 4-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See terminology for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or by law. However, none of the foregoing limits the requirement of disclosure in subdivision (b). This disclosure is required to prevent a lawyer from becoming an unwitting accomplice in the fraudulent acts of a client. See also Scope.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Authorized disclosure

A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure adverse to client

The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts that

would enable the lawyer to counsel against a wrongful course of action. While the public may be protected if full and open communication by the client is encouraged, several situations must be distinguished.

First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See rule 4-1.2(d). Similarly, a lawyer has a duty under rule 4-3.3(a)(4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in rule 4-1.2(d) to avoid assisting a client in criminal or fraudulent conduct.

Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated rule 4-1.2(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

Third, the lawyer may learn that a client intends prospective conduct that is criminal. As stated in subdivision (b)(1), the lawyer shall reveal information in order to prevent such consequences. It is admittedly difficult for a lawyer to "know" when the criminal intent will actually be carried out, for the client may have a change of mind.

Subdivision (b)(2) contemplates past acts on the part of a client that may result in present or future consequences that may be avoided by disclosure of otherwise confidential communications. Rule 4-1.6(b)(2) would now require the attorney to disclose information reasonably necessary to prevent the future death or substantial bodily harm to another, even though the act of the client has been completed.

The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. Where practical the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose.

Withdrawal

If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in rule 4-1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in rule 4-1.6. Neither this rule nor rule 4-1.8(b) nor rule 4-1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with the rule, the lawyer may make inquiry within the organization as indicated in rule 4-1.13(b).

Dispute concerning lawyer's conduct

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subdivision (c)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Subdivision (c) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal, or professional disciplinary proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by subdivision (c) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures otherwise required or authorized

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, rule 4-1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See rules 4-2.3, 4-3.3, and 4-4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes rule 4-1.6 is a matter of interpretation beyond the scope of these rules, but a presumption should exist against such a supersession.

Former client

The duty of confidentiality continues after the client-lawyer relationship has terminated. See rule 4-1.9 for the prohibition against using such information to the disadvantage of the former client.

CWest's Florida Statutes Annotated CurrentnessRules Regulating the Florida Bar (Refs & Annos)Chapter 4. Rules of Professional Conduct (Refs & Annos)4-1. Client-Lawyer Relationship**→→ Rule 4-1.6. Confidentiality of Information**

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Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Subdivision (c) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal, or professional disciplinary proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by subdivision (c) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures otherwise required or authorized

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, rule 4-1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See rules 4-2.3, 4-3.3, and 4-4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes rule 4-1.6 is a matter of interpretation beyond the scope of these rules, but a presumption should exist against such a supersession.

Former client

The duty of confidentiality continues after the client-lawyer relationship has terminated. See rule 4-1.9 for the prohibition against using such information to the disadvantage of the former client.

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West's Florida Statutes Annotated Currentness

Rules Regulating the Florida Bar (Refs & Annos)

Chapter 4. Rules of Professional Conduct (Refs & Annos)

4-1. Client-Lawyer Relationship

→ → **Rule 4-1.8. Conflict of Interest; Prohibited and Other Transactions**

(a) Business Transactions With or Acquiring Interest Adverse to Client. A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses, unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) Using Information to Disadvantage of Client. A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

(c) Gifts to Lawyer or Lawyer's Family. A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this subdivision, related persons include a spouse, child, grandchild, parent, grandparent, or other relative with whom the lawyer or the client maintains a close, familial relationship.

(d) Acquiring Literary or Media Rights. Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) Financial Assistance to Client. A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) Compensation by Third Party. A lawyer shall not accept compensation for representing a client from one other

than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by rule 4-1.6.

(g) Settlement of Claims for Multiple Clients. A lawyer who represents 2 or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) Limiting Liability for Malpractice. A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. A lawyer shall not settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) Acquiring Proprietary Interest in Cause of Action. A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee.

(j) Representation of Insureds. When a lawyer undertakes the defense of an insured other than a governmental entity, at the expense of an insurance company, in regard to an action or claim for personal injury or for property damages, or for death or loss of services resulting from personal injuries based upon tortious conduct, including product liability claims, the Statement of Insured Client's Rights shall be provided to the insured at the commencement of the representation. The lawyer shall sign the statement certifying the date on which the statement was provided to the insured. The lawyer shall keep a copy of the signed statement in the client's file and shall retain a copy of the signed statement for 6 years after the representation is completed. The statement shall be available for inspection at reasonable times by the insured, or by the appropriate disciplinary agency. Nothing in the Statement of Insured Client's Rights shall be deemed to augment or detract from any substantive or ethical duty of a lawyer or affect the extra-disciplinary consequences of violating an existing substantive legal or ethical duty; nor shall any matter set forth in the Statement of Insured Client's Rights give rise to an independent cause of action or create any presumption that an existing legal or ethical duty has been breached.

STATEMENT OF INSURED CLIENT'S RIGHTS

An insurance company has selected a lawyer to defend a lawsuit or claim against you. This Statement of Insured Client's Rights is being given to you to assure that you are aware of your rights regarding your legal representation. This disclosure statement highlights many, but not all, of your rights when your legal representation is being provided by the insurance company.

1. *Your Lawyer.* If you have questions concerning the selection of the lawyer by the insurance company, you should discuss the matter with the insurance company and the lawyer. As a client, you have the right to know about the

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(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

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- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee.

(j) Representation of Insureds. When a lawyer undertakes the defense of an insured other than a governmental entity, at the expense of an insurance company, in regard to an action or claim for personal injury or for property damages, or for death or loss of services resulting from personal injuries based upon tortious conduct, including product liability claims, the Statement of Insured Client's Rights shall be provided to the insured at the commencement of the representation. The lawyer shall sign the statement certifying the date on which the statement was provided to the insured. The lawyer shall keep a copy of the signed statement in the client's file and shall retain a copy of the signed statement for 6 years after the representation is completed. The statement shall be available for inspection at reasonable times by the insured, or by the appropriate disciplinary agency. Nothing in the Statement of Insured Client's Rights shall be deemed to augment or detract from any substantive or ethical duty of a lawyer or affect the extra-disciplinary consequences of violating an existing substantive legal or ethical duty; nor shall any matter set forth in the Statement of Insured Client's Rights give rise to an independent cause of action or create any presumption that an existing legal or ethical duty has been breached.

STATEMENT OF INSURED CLIENT'S RIGHTS

An insurance company has selected a lawyer to defend a lawsuit or claim against you. This Statement of Insured Client's Rights is being given to you to assure that you are aware of your rights regarding your legal representation. This disclosure statement highlights many, but not all, of your rights when your legal representation is being provided by the insurance company.

1. *Your Lawyer.* If you have questions concerning the selection of the lawyer by the insurance company, you should discuss the matter with the insurance company and the lawyer. As a client, you have the right to know about the

lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours and give you this information in writing, if you request it. Your lawyer is responsible for keeping you reasonably informed regarding the case and promptly complying with your reasonable requests for information. You are entitled to be informed of the final disposition of your case within a reasonable time.

2. *Fees and Costs.* Usually the insurance company pays all of the fees and costs of defending the claim. If you are responsible for directly paying the lawyer for any fees or costs, your lawyer must promptly inform you of that.

3. *Directing the Lawyer.* If your policy, like most insurance policies, provides for the insurance company to control the defense of the lawsuit, the lawyer will be taking instructions from the insurance company. Under such policies, the lawyer cannot act solely on your instructions, and at the same time, cannot act contrary to your interests. Your preferences should be communicated to the lawyer.

4. *Litigation Guidelines.* Many insurance companies establish guidelines governing how lawyers are to proceed in defending a claim. Sometimes those guidelines affect the range of actions the lawyer can take and may require authorization of the insurance company before certain actions are undertaken. You are entitled to know the guidelines affecting the extent and level of legal services being provided to you. Upon request, the lawyer or the insurance company should either explain the guidelines to you or provide you with a copy. If the lawyer is denied authorization to provide a service or undertake an action the lawyer believes necessary to your defense, you are entitled to be informed that the insurance company has declined authorization for the service or action.

5. *Confidentiality.* Lawyers have a general duty to keep secret the confidential information a client provides, subject to limited exceptions. However, the lawyer chosen to represent you also may have a duty to share with the insurance company information relating to the defense or settlement of the claim. If the lawyer learns of information indicating that the insurance company is not obligated under the policy to cover the claim or provide a defense, the lawyer's duty is to maintain that information in confidence. If the lawyer cannot do so, the lawyer may be required to withdraw from the representation without disclosing to the insurance company the nature of the conflict of interest which has arisen. Whenever a waiver of the lawyer-client confidentiality privilege is needed, your lawyer has a duty to consult with you and obtain your informed consent. Some insurance companies retain auditing companies to review the billings and files of the lawyers they hire to represent policyholders. If the lawyer believes a bill review or other action releases information in a manner that is contrary to your interests, the lawyer should advise you regarding the matter.

6. *Conflicts of Interest.* Most insurance policies state that the insurance company will provide a lawyer to represent your interests as well as those of the insurance company. The lawyer is responsible for identifying conflicts of interest and advising you of them. If at any time you believe the lawyer provided by the insurance company cannot fairly represent you because of conflicts of interest between you and the company (such as whether there is insurance coverage for the claim against you), you should discuss this with the lawyer and explain why you believe there is a conflict. If an actual conflict of interest arises that cannot be resolved, the insurance company may be required to provide you with another lawyer.

7. *Settlement.* Many policies state that the insurance company alone may make a final decision regarding settlement of a claim, but under some policies your agreement is required. If you want to object to or encourage a settlement within policy limits, you should discuss your concerns with your lawyer to learn your rights and possible consequences. No settlement of the case requiring you to pay money in excess of your policy limits can be reached without your agreement, following full disclosure.

8. *Your Risk.* If you lose the case, there might be a judgment entered against you for more than the amount of your insurance, and you might have to pay it. Your lawyer has a duty to advise you about this risk and other reasonably foreseeable adverse results.

9. *Hiring Your Own Lawyer.* The lawyer provided by the insurance company is representing you only to defend the lawsuit. If you desire to pursue a claim against the other side, or desire legal services not directly related to the defense of the lawsuit against you, you will need to make your own arrangements with this or another lawyer. You also may hire another lawyer, at your own expense, to monitor the defense being provided by the insurance company. If there is a reasonable risk that the claim made against you exceeds the amount of coverage under your policy, you should consider consulting another lawyer.

10. *Reporting Violations.* If at any time you believe that your lawyer has acted in violation of your rights, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar call (850) 561-5839 or you may access the Bar at www.FlaBar.org.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, PLEASE ASK FOR AN EXPLANATION.

CERTIFICATE

The undersigned hereby certifies that this Statement of Insured Client's Rights has been provided to (name of insured/client(s)) by (mail/hand delivery) at (address of insured/client(s) to which mailed or delivered), on(date)

[Signature of Attorney]

[Print/Type Name]
Florida Bar No.:

(k) **Imputation of Conflicts.** While lawyers are associated in a firm, a prohibition in the foregoing subdivisions (a) through (i) that applies to any one of them shall apply to all of them.

CREDIT(S)

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); May 20, 2004 (875 So.2d 448); March 23, 2006, effective May 22, 2006 (933 So.2d 417); Nov. 19, 2009, effective Feb. 1, 2010 (24 So.3d 63).

Current with amendments received through 8/15/2012

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West's Florida Statutes Annotated Currentness
Rules Regulating the Florida Bar (Refs & Annos)
Chapter 4. Rules of Professional Conduct (Refs & Annos)
4-1. Client-Lawyer Relationship
→ → **Rule 4-1.9. Conflict of Interest; Former Client**

A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) 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;
- (b) 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
- (c) reveal information relating to the representation except as these rules would permit or require with respect to a client.

CREDIT(S)

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); March 23, 2006, effective May 22, 2006 (933 So.2d 417); Nov. 19, 2009, effective Feb. 1, 2010 (24 So.3d 63).

COMMENT

After termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this rule. The principles in rule 4-1.7 determine whether the interests of the present and former client are adverse. Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction.

The scope of a "matter" for purposes of rule 4-1.9(a) may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Matters are "substantially related" for purposes of this rule if they involve the same transaction or legal dispute, or if the current matter would involve the lawyer attacking work that the lawyer performed for the

former client. For example, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent.

Lawyers owe confidentiality obligations to former clients, and thus information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client without the former client's consent. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. Information that has been widely disseminated by the media to the public, or that typically would be obtained by any reasonably prudent lawyer who had never represented the former client, should be considered generally known and ordinarily will not be disqualifying. The essential question is whether, but for having represented the former client, the lawyer would know or discover the information.

Information acquired in a prior representation may have been rendered obsolete by the passage of time. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

The provisions of this rule are for the protection of clients and can be waived if the former client gives informed consent. See terminology.

With regard to an opposing party's raising a question of conflict of interest, see comment to [rule 4-1.7](#). With regard to disqualification of a firm with which a lawyer is associated, see [rule 4-1.10](#).

LAW REVIEW AND JOURNAL COMMENTARIES

Attorney disqualification in Florida following State Farm v. K.A.W. Dana G. Bradford II and Steven E. Brust, 68 Fla.B.J. 14 (April 1994).

Conflicts of interest: Rules of Professional Conduct. Ralph A. DeMeo and William D. Anderson, 65 Fla.B.J. 55 (Jan. 1991).

LIBRARY REFERENCES

Attorney and Client  21 to 21.10.
Westlaw Topic No. 45.
C.J.S. Attorney and Client §§ 56, 169 to 194.

RESEARCH REFERENCES

ALR Library

51 ALR Federal 678, Propriety of Law Firm's Representation of Client in Federal Court Where Lawyer Affiliated With Firm is Disqualified from Representing Client.

17 ALR 3rd 835, What Constitutes Representation of Conflicting Interests Subjecting Attorney to Disciplinary Action.

52 ALR 2nd 1243, Propriety and Effect of Attorney Representing Interest Adverse to that of Former Client.

154 ALR 501, Attorney's Representation of Parties Adversely Interested as Affecting Judgment or Estoppel in Respect Thereof.

Encyclopedias

Disqualification for Failure to Preserve Client Confidences, or Conflict of Interest Between Current and Former Clients, Am. Jur. 2d Federal Courts § 152.

Existence of Attorney-Client Relationship, 48 Am. Jur. Proof of Facts 2d 525.

Proof of Waiver of Attorney-Client Privilege, 32 Am. Jur. Proof of Facts 3d 189.

Client's Consent, FL Jur. 2d Attorneys at Law § 338.

Effect of Lawyer's Leaving Firm, FL Jur. 2d Attorneys at Law § 350.

Illustrative Cases, FL Jur. 2d Attorneys at Law § 337.

Other Member of Law Firm as Witness, FL Jur. 2d Attorneys at Law § 367.

Procedure; Appeal and Review, FL Jur. 2d Attorneys at Law § 372.

Representation in Matter Involving Former Client, FL Jur. 2d Attorneys at Law § 142.

Special Considerations Regarding Organizational Clients, FL Jur. 2d Attorneys at Law § 335.

Using Information to Client's Disadvantage, FL Jur. 2d Attorneys at Law § 329.

Waiver, FL Jur. 2d Attorneys at Law § 354.

Rights, Powers, and Duties, FL Jur. 2d Workers' Compensation § 414.

Treatises and Practice Aids

5 Florida Practice Series § 6:4, Disqualification.

9 Florida Practice Series § 2:17, JCC Jurisdiction to Enforce the Florida Rules of Professional Conduct Governing the Behavior of Attorneys.

Trawick's Florida Practice and Procedure § 4:14, Attorneys.

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1. Construction and application

Prohibition on representation of clients with interests adverse to those of former client without former client's consent

applies without regard to whether prior representation entailed disclosure of confidential communications. U.S. v. Culp, M.D.Fla.1996, 934 F.Supp. 394. Attorney And Client ↪21

Blanket prohibition on representation of clients with interests adverse to those of former client without former client's consent promotes attorney's duty of loyalty to clients while furthering objectives of rules protecting confidential communications between attorney and client by obviating need for intrusive judicial fact finding that would require disclosure of confidential communications. U.S. v. Culp, M.D.Fla.1996, 934 F.Supp. 394. Attorney And Client ↪21

Attorney has no duty of loyalty to former client under Florida law apart from that imposed by Florida Rule of Professional Conduct not to represent another person in same or substantially related matter in which that person's interests are materially adverse to interests of former client. In re Servico, Inc., Bkrtcy.S.D.Fla.1993, 149 B.R. 1009. Attorney And Client ↪105.5

Mere inclusion of attorney's duty of confidentiality in Rules of Professional Responsibility does not prevent breach of this duty from being enforced as tort. Elkind v. Bennett, App. 4 Dist., 958 So.2d 1088 (2007), rehearing denied, on subsequent appeal 12 So.3d 235. Attorney And Client ↪109

Bar rule governing conflicts of interest is designed to protect client confidentiality and is aimed at the problem of attorneys switching sides. Estright v. Bay Point Improvement Ass'n, Inc., App. 1 Dist., 921 So.2d 810 (2006). Attorney And Client ↪20.1

Attorneys owe duty of confidentiality and loyalty to all their clients, including present and former co-clients. Zarco Supplv Co. v. Bonnell, App. 1 Dist., 658 So.2d 151 (1995), rehearing denied. Attorney And Client ↪32(13)

Conflict concerns arise when an attorney must prepare a case against, cross-examine or impeach former client on subject matter so closely connected with earlier representation that confidentiality might be involved. Balda v. Sorchych, App. 5 Dist., 616 So.2d 1114 (1993). Attorney And Client ↪21

2. Changing firms

When lawyer moves from one firm to another, situation is governed by Florida Bar Rule pertaining to imputed disqualification, and not by rule pertaining to conflict of interest. Nissan Motor Corp. in U.S.A. v. Orozco, App. 4 Dist., 595 So.2d 240 (1992), review denied 605 So.2d 1265. Attorney And Client ↪21.15

3. Consent to representation

Town's attorneys were not disqualified from representing town for a conflict of interest on resident's claim under §§ 1983 that the town had a custom and policy of retaliating against whistle-blowers who reported misconduct by town officials, although attorneys represented town officials as individuals in another case, where after consultation officials expressly consented to representation, and other case was not a substantially related matter and involved different parties and legal issues. Bochese v. Town of Ponce Inlet, M.D.Fla.2003, 267 F.Supp.2d 1240. Attorney And Client ↪21.5(2)

Right of flight attendants who petitioned to enforce class action settlement to be represented by experienced counsel of their choice was outweighed by any prejudice to the two class members who were board members of foundation created by settlement and who objected to counsel; counsel were not lead counsel in the original action so their limited interaction with the objecting class members and their counsel would have resulted in little access to confidential information, and although arising from the prior litigation, the present action involved a different issue in that the

petitioning flight attendants were not asking that the court undo the prior settlement, rather they were requesting that the court determine whether the foundation created under the settlement was functioning as originally intended. Broin v. Phillip Morris Companies, Inc., App. 3 Dist., 84 So.3d 1107 (2012), rehearing denied. Attorney and Client 21.5(4)

Any conflict of interest arising from insurer's attorney's representation of opposing party's former employee in unrelated matter was resolved by former employee's consenting, after consultation, to her attorney's representation of insurer. Legion Ins. Co. v. Bank of America, N.A., App. 2 Dist., 807 So.2d 690 (2002), rehearing denied. Attorney And Client 21.10

4. Successor to client

Transfer of lease did not transfer attorney-client privilege of original lessee to transferee absent consent of attorney. NCL Corp. v. Lone Star Bldg. Centers (Eastern) Inc., S.D.Fla.1992, 144 B.R. 170. Privileged Communications And Confidentiality 116

5. Successor to adversary

Where attorney had long-standing relationship with client regarding its leases at airport, an irrebuttable presumption arose that client disclosed confidences to attorney during that representation, and, thus, attorney would not be allowed to represent successor of former client's adversary in matter substantially related to that in which attorney represented former client. Kenn Air Corp. v. Gainesville-Alachua County Regional Airport Authority, App. 1 Dist., 593 So.2d 1219 (1992). Attorney And Client 21.20

6. Public defender

Trial court committed reversible error in finding public defender guilty of contumacious impropriety in attempting to cross-examine State's witness who had previously been represented by public defender's office and had pled to reduce charge in same homicide where subject matter of attempted cross-examination included statements made by witness in presence of third parties and matters of public record. Olds v. State, App. 4 Dist., 302 So.2d 787 (1974), certiorari denied 312 So.2d 743. Contempt 10; Contempt 66(7)

Public defender may not act against his client in any case or matter in which he formerly represented him and public defender may at no time use against former client any confidential information acquired by virtue of previous attorney-client relationship. State v. Brvan, App. 2 Dist., 227 So.2d 221 (1969). Attorney And Client 21.5(2); Criminal Law 1840

7. Disqualification--In general

Disqualification of defendants' counsel in antitrust suit was not warranted on ground of avoiding appearance of impropriety because law firm had previously represented plaintiff in connection with the franchise transaction involved in the suit, where attorney who dealt with plaintiff had virtually no contact with defendants and left the law firm before institution of the action, none of the issues dealt with related to the present antitrust litigation, and there was no demonstration that any confidential information the firm may have acquired would be of any value to defendants in resolution of the antitrust claims, and firm had not been exposed to confidential matters regarding plaintiff. Cossette v. Country Style Donuts, Inc., 1981, 647 F.2d 526. Attorney And Client 21.15

Disqualification of attorney based upon admonition of canon of Code of Professional Responsibility that lawyers should avoid even appearance of professional impropriety requires that court find at least reasonable possibility that

some specifically identifiable impropriety did in fact occur and that likelihood of public suspicion or obloquy outweighs social interests which would be served by lawyer's continued participation in particular case. Zylstra v. Safeway Stores, Inc., 1978, 578 F.2d 102. Attorney And Client ¶19

If lawyer is disqualified under Florida law for conflict of interest with former client, disqualification is imputed to all lawyers associating with that lawyer in firm, but disqualification does not extend to attorneys in separate firms who become affiliated with disqualified attorney's firm. Baybrook Homes, Inc. v. Banyan Const. & Development, Inc., M.D.Fla.1997, 991 F.Supp. 1440. Attorney And Client ¶21.15

Law firm was disqualified from representing party to action after party's opponent had consulted with firm member about underlying complaint; one attorney's prior relationship with party precluded attorney and her firm from representing opponent. Baybrook Homes, Inc. v. Banyan Const. & Development, Inc., M.D.Fla.1997, 991 F.Supp. 1440. Attorney And Client ¶21.15

Court would not presume that former public housing authority employee was privy to privileged communications, in determining whether law firm representing clients suing housing authority should be disqualified based on some appearance of impropriety stemming from law firm's past representation of employee, particularly as Florida law precluded public bodies such as housing authority from having confidential meetings and discussions or from keeping documents from public view except under very narrow and limited circumstances. Concerned Parents of Jordan Park v. Housing Authority of City of St. Petersburg, Fla., M.D.Fla.1996, 934 F.Supp. 406. Attorney And Client ¶21.20

Defendant could not waive either rights of attorney's former clients or interest of court in integrity of its procedures and fair and efficient administration of justice for purposes of government's motion to disqualify attorney based on conflict of interest. U.S. v. Culp, M.D.Fla.1996, 934 F.Supp. 394. Criminal Law ¶1791

To prevail on motion to disqualify counsel, movant must show existence of prior attorney-client relationship and that the matters in pending suit are substantially related to the previous matter or cause of action. McPartland v. ISI Inv. Services, Inc., M.D.Fla.1995, 890 F.Supp. 1029. Attorney And Client ¶21

Disqualification of even one attorney from law firm on basis of prior representation of opposing party necessitates disqualification of firm as a whole, under Florida law. McPartland v. ISI Inv. Services, Inc., M.D.Fla.1995, 890 F.Supp. 1029. Attorney And Client ¶21.15

Disqualification of counsel who previously represented insurer on fire loss and subrogation claim to avoid appearance of professional impropriety was required under Florida law after attorney formed new law firm with attorney who previously represented insured in same action; irrebuttable presumption that confidential information was disclosed arose from finding that matters involved were identical. Brotherhood Mut. Ins. Co. v. National Presto Industries, Inc., M.D.Fla.1994, 846 F.Supp. 57. Attorney And Client ¶21.15; Attorney And Client ¶21.20

In attorney disqualification cases based on conflict of interests, two-pronged test is applied: first, party moving for disqualification must establish that it, at one time, had attorney-client relationship with counsel; and second, moving party does not need to show specific confidences that have been revealed by former client, but only must show that present and prior representations are substantially related, which is done by specifically demonstrating relationship between subject matters, issues, and causes of action of both present and previous representations so that court can determine whether "substantial relationship" exists. Contant v. Kawasaki Motors Corp., U.S.A., Inc., M.D.Fla.1993, 826 F.Supp. 427. Attorney And Client ¶20.1

To prevail on motion to disqualify counsel, moving party must show existence of prior attorney-client relationship and that matters embraced in pending suit are substantially related to matter or cause of action in prior suit. Smalley

Transp. Co. v. Prime Computer, Inc., M.D.Fla.1991, 137 F.R.D. 397. Attorney And Client 21

Under Florida law, attorney's duty of loyalty to former client may be broader than attorney-client privilege, so that attorney may not oppose his former client on related matter, even if he only uses information that comes from source other than his former client. In re Skvway Communications Holding Corp., Bkrcty.M.D.Fla.2009, 415 B.R. 859. Attorney and Client 21

Under Florida law, bank claiming to hold perfected security interest in all of Chapter 11 debtor's assets, including debtor's leasehold interest at airport operated by city airport authority, was not entitled to disqualification or recusal of authority's counsel, given that counsel's representation of bank in collection cases before small claims court and in other matters did not involve same or substantially related matters as his representation of authority, that counsel was not actively representing bank in pending litigation when he accepted employment with authority, and that counsel represented authority in litigation in state-court action against debtor without objection from bank, which did not seek disqualification until after learning of authority's unwillingness to settle with bank issue regarding debtor's lease. In re Jet 1 Center, Inc., Bkrcty.M.D.Fla.2004, 310 B.R. 649. Attorney And Client 21.5(6)

One rationale for the protection of client confidences by bar rule limiting an attorney's ability to oppose a former client in a substantially related matter is that the legal system cannot function fairly and effectively if an attorney has an informational advantage in the form of confidences gained during a former representation of his client's current opponent. Frank, Weinberg & Black, P.A. v. Effman, App. 4 Dist., 916 So.2d 971 (2005). Attorney And Client 21

Attorney who represented law firm in a dispute with a departing shareholder over fees received from clients was not thereby disqualified from representing a different former shareholder in his dispute with law firm over valuation of his shares; the two matters were not substantially related, and there was no danger of dissemination of confidential information since the shareholder in the later action was himself a party to the earlier action and was familiar with the law firm's thinking and strategy concerning disputes with former shareholders. Frank, Weinberg & Black, P.A. v. Effman, App. 4 Dist., 916 So.2d 971 (2005). Attorney And Client 21.5(1)

Party seeking disqualification of attorney on basis of conflict of interest must show that: (1) attorney/client relationship existed; and (2) attorney represents another client regarding a matter, or substantially related matter, that is adverse to interests of the former client seeking disqualification. Anderson Trucking Service, Inc. v. Gibson, App. 5 Dist., 884 So.2d 1046 (2004). Attorney And Client 21

Wife's failure to affirmatively object to her husband's being represented in dissolution proceeding by former attorney, who had represented husband and wife jointly in business matter, could not be construed as "consent after consultation" as required by the rules before former attorney would be allowed to proceed despite conflict of interest. The Florida Bar v. Dunagan, 731 So.2d 1237 (1999), rehearing denied, reinstatement granted 775 So.2d 959. Attorney And Client 21.10

Although rules do not specifically state that consultation with and consent from client or former client must be obtained before attorney may undertake conflicting representation, clearly they contemplate as much. The Florida Bar v. Dunagan, 731 So.2d 1237 (1999), rehearing denied, reinstatement granted 775 So.2d 959. Attorney And Client 21.10

It is not responsibility of client or client's new attorney to raise issue of conflict of interest; rather, attorney must obtain consent before beginning conflicting representation. The Florida Bar v. Dunagan, 731 So.2d 1237 (1999), rehearing denied, reinstatement granted 775 So.2d 959. Attorney And Client 21.10

Attorney who had provided theatrical manager with addendum to standard form contract she used in her business was

disqualified from representing manager's clients in suit against manager involving interpretation of the form. Lane v. Sarfati, App. 3 Dist., 676 So.2d 475 (1996), rehearing denied. Attorney And Client 21.5(1)

To disqualify counsel from representing party whose interests are adverse to former client, movant must show that there was attorney-client relationship, thereby giving rise to irrefutable presumption that confidences were disclosed to attorney during course of relationship, and that current subject matter is same or substantially related to matter in which lawyer represented former client. Zarco Supply Co. v. Bonnell, App. 1 Dist., 658 So.2d 151 (1995), rehearing denied. Attorney And Client 21; Attorney And Client 21.20

Law firm which had initially represented employee and employee's family members, who were injured while riding with employee in employer's vehicle, had conflict of interest and was disqualified from representing family members in action against employer where firm had withdrawn from representation of employee; even though no ethical misconduct had occurred, possibility of conflict was too strong to ignore as firm had had attorney-client relationship with employee, whose negligence could be imputed to employer, and action dealt with same subject matter as earlier representation of employee. Zarco Supply Co. v. Bonnell, App. 1 Dist., 658 So.2d 151 (1995), rehearing denied. Attorney And Client 21.5(1)

Plaintiff's counsel was properly disqualified, in plaintiff's Jones Act action against cruise line, where counsel previously acted as adjuster for cruise line and had access to confidential information relating to substantially similar matters brought by other seamen. Tuazon v. Royal Caribbean Cruises, Ltd., App. 3 Dist., 641 So.2d 417 (1994). Attorney And Client 21.5(1)

Former client of attorney did not waive objection to conflict of interest in attorney's representation of new clients in suit against former client by failing to file a motion to disqualify attorney in previous suit; former client timely informed attorney that attorney/client relationship between them had existed and that he did not consent to attorney's firm prosecuting claim against him in substantially related matter, and he was obligated to do no more. Snyderburn v. Bantock, App. 5 Dist., 625 So.2d 7 (1993), review denied 634 So.2d 622. Attorney And Client 21.10

Once former client timely informed attorney that he did not consent to attorney's firm prosecuting claim against him in substantially related matter, ethical obligation was on attorney to either obtain consent to represent new client against former clients or to withdraw, or, if in doubt about his status, he should have gotten his obligations determined at outset; client's failure to seek disqualification did not waive conflict. Snyderburn v. Bantock, App. 5 Dist., 625 So.2d 7 (1993), review denied 634 So.2d 622. Attorney And Client 21.10

To disqualify private law firm from representing party whose interests are adverse, former client need show only that attorney-client relationship existed, thereby giving rise to irrefutable presumption that confidences were disclosed during course of that relationship, and that matter in which law firm subsequently represented interest adverse to former client is same matter or substantially similar to matter in which it represented former client. University of Miami v. Danskv, App. 1 Dist., 622 So.2d 613 (1993). Attorney And Client 21; Attorney And Client 21.20

Trial court did not commit material departure from essential requirements of law by declining to require removal of attorney representing prospective shareholder of corporation from suit against corporation and its principal officer, on grounds that officer had been represented by firm three years previously in marital matter and that firm had advised him concerning bankruptcy proceedings of corporation; prospective shareholder had known about representation for over three years and had failed to take action. Balda v. Sorchych, App. 5 Dist., 616 So.2d 1114 (1993). Attorney And Client 21.20

Rule that lawyer who was formerly representing client in matter may not represent another person in same or substantially related matter in which that person's interests were materially adverse to interest of former client applied to corporation which acquired rights in interests of former client by virtue of its purchase of tangible and intangible

assets. Kenn Air Corp. v. Gainesville-Alachua County Regional Airport Authority, App. 1 Dist., 593 So.2d 1219 (1992). Attorney And Client ⚡21.5(3)

Actual violation of ethics rules is not prerequisite to granting motion for disqualification to avoid appearance of impropriety. Kenn Air Corp. v. Gainesville-Alachua County Regional Airport Authority, App. 1 Dist., 593 So.2d 1219 (1992). Attorney And Client ⚡19

To disqualify a private law firm from representing a party whose interests are adverse, the former client need show only that an attorney-client relationship existed, giving rise to the irrefutable presumption that confidences were disclosed during the course of that relationship, and that the matter in which the law firm subsequently represented the interest adverse to the former client is the same matter or substantially similar to the matter in which it represented the former client. Junger Utility & Paving Co., Inc. v. Myers, App. 1 Dist., 578 So.2d 1117 (1989). Attorney And Client ⚡21

Disqualification of party's counsel was not warranted absent evidence either that there was substantial relationship between matters in case at bar and those in prior litigation, or that counsel had access to any information during former representation that would disadvantage opponents in current action. Jenkins v. Harris Ins., Inc., App. 1 Dist., 572 So.2d 1011 (1991). Attorney And Client ⚡21.5(1)

Attorney who allegedly represented party in prior matters concerning property which was subject of current litigation involving foreclosure of mortgage would be disqualified from representing opposing parties; former client claimed that prior matters in which attorney had represented her involved conveyance of property which was relevant and related to issue in litigation, so there was prima facie showing that current matters were substantially related to matters in which attorney had represented former client, and ethics code's protection of client confidences was broader than evidentiary attorney-client privilege protecting privileged communications, so disqualification was warranted to avoid appearance of impropriety. Campbell v. American Pioneer Sav. Bank, App. 4 Dist., 565 So.2d 417 (1990). Attorney And Client ⚡21.5(1)

Requiring disqualification of attorney is matter of no small consequence and thus, before client's former attorney will be disqualified from representing party whose interests are adverse to former client's, former client must show that matters embraced in pending suit are substantially related to matters or cause of action wherein attorney previously represented former client. Sears, Roebuck & Co. v. Stansbury, App. 5 Dist., 374 So.2d 1051 (1979). Attorney And Client ⚡21

Where affidavits submitted in support of motion to force removal of plaintiff's attorney and his firm, on ground that confidences were made known to senior partner in firm at earlier time in similar suit, showed that attorney-client relationship was established between defendant manufacturer and senior partner, giving rise to irrefutable presumption that confidences were disclosed during course of that relationship, and there was ample material presented showing substantial similarity between two cases, trial court erred in requiring testimony of lawnmower designer, who allegedly also gave confidential information to partner during prior case, but since disqualification of counsel is extremely serious matter, plaintiff on remand should have opportunity to present counteraffidavits. Sears, Roebuck & Co. v. Stansbury, App. 5 Dist., 374 So.2d 1051 (1979). Attorney And Client ⚡21.20; Attorney And Client ⚡30

Attorney who represented plaintiff in wrongful death action against owner and driver of a station wagon and against owner and insurer of a trailer and who had previously represented the owner of the trailer and his insurer and, in that capacity, had interviewed the driver and owner of the station wagon under circumstances in which the driver and owner of that vehicle thought that the attorney represented them, with result that the attorney took statements and removed a material portion of vehicle for analysis, was properly disqualified from representing the plaintiffs in wrongful death action. Andrews v. Allstate Ins. Co., App. 4 Dist., 366 So.2d 462 (1978). Attorney And Client ⚡21.5(1)

Under Rules Regulating the Florida Bar, law firm's knowledge of charges against codefendant could not be basis of conflict of interest in subsequent representation of defendant, since charges were matters of public record. Freund v. Butterworth, C.A.11 (Fla.)1999, 165 F.3d 839, certiorari denied 120 S.Ct. 57, 528 U.S. 817, 145 L.Ed.2d 50. Criminal Law 1801

Law firm's prior representation of defendant's non-testifying, separately-tried codefendant, who made allegations at pretrial severance hearing of embarrassing and illegal conduct against members of the law firm, did not give rise to actual conflict of interest, as required to support claim of ineffective assistance of counsel in murder prosecution; damage was done once codefendant testified at pretrial hearing, and attorney was able to deny each and every accusation. Freund v. Butterworth, C.A.11 (Fla.)1999, 165 F.3d 839, certiorari denied 120 S.Ct. 57, 528 U.S. 817, 145 L.Ed.2d 50. Criminal Law 1801

Even if law firm's prior representation of defendant's non-testifying, separately-tried codefendant, who made allegations at pretrial severance hearing of embarrassing and illegal conduct against members of the law firm, gave rise to actual conflict of interest, lawyer's performance was not adversely affected in murder prosecution in which attorney pursued defense of insanity, rather than shift blame to codefendant; formal notice of intent to rely on insanity pre-dated codefendant's allegations at severance hearing, and blame-shifting defense would not have been plausible, given defendant's confession that he stabbed victim and supporting testimony of three fact witnesses. Freund v. Butterworth, C.A.11 (Fla.)1999, 165 F.3d 839, certiorari denied 120 S.Ct. 57, 528 U.S. 817, 145 L.Ed.2d 50. Criminal Law 1801

8. --- Motions, disqualification

In determining whether moving party has waived its right to object to opposing party's counsel, consideration should be given to (1) length of the delay in bringing the motion to disqualify, (2) when movant learned of the conflict, (3) whether movant was represented by counsel during the delay, (4) why the delay occurred, and (5) whether disqualification would result in prejudice to the non-moving party; in particular, consideration should be given and inquiry be made as to whether disqualification motion was delayed for tactical reasons. In re Jet 1 Center, Inc., Bkrcty.M.D.Fla.2004, 310 B.R. 649. Attorney And Client 21.10

In the context of motion to disqualify counsel, party's choice of counsel is entitled to substantial deference. In re Jet 1 Center, Inc., Bkrcty.M.D.Fla.2004, 310 B.R. 649. Attorney And Client 19

Party seeking disqualification of an attorney carries a heavy burden and must meet a high standard of proof before an attorney is disqualified. In re Jet 1 Center, Inc., Bkrcty.M.D.Fla.2004, 310 B.R. 649. Attorney And Client 21.20

Motions to disqualify counsel are viewed with disfavor, and disqualification is a drastic measure which a court should not impose unless absolutely necessary. In re Jet 1 Center, Inc., Bkrcty.M.D.Fla.2004, 310 B.R. 649. Attorney And Client 19

A motion to disqualify counsel should be made with reasonable promptness after the party discovers the facts which lead to the motion. Zayas-Bazan v. Marceiin, App. 3 Dist., 40 So.3d 870 (2010). Attorney and Client 21.20

Motions for disqualification of counsel are viewed with skepticism because disqualification impinges on a party's right to employ a lawyer of choice and such motions are often brought for tactical purposes. Coral Reef of Key Biscayne Developers, Inc. v. Lloyd's Underwriters at London, App. 3 Dist., 911 So.2d 155 (2005). Attorney And Client 19

9. --- State attorney's office, disqualification

Entire state attorney's office was not disqualified from prosecuting defendant who had related confidential communications to attorney who later became member of that office, where that attorney had neither provided prejudicial information relating to pending criminal charge nor personally assisted, in any capacity, in the prosecution of the charge; state office was not a "law firm" within the meaning of former Canon 5 of the Code of Professional Responsibility (See, now, Bar Rule 4-1.7 et seq.). State v. Fitzpatrick, 464 So.2d 1185 (1985). Criminal Law ¶1693

Fact that attorney, who assisted in defending a defendant's codefendant at trial, had subsequently become assistant state attorney did not warrant disqualification of state attorney's office from reprosecuting defendant after his conviction was reversed, in light of fact that, though defense named the attorney as a possible defense witness, the state did not intend to call the attorney as a witness or to involve him in the reprosecution and that no transmission of confidential information relating to the codefendant had occurred between the attorney and state attorney's office. State ex rel. Oldham v. Aulls, App. 5 Dist., 408 So.2d 587 (1981). Criminal Law ¶1693

10. --- Prior public employment, disqualification

District court was not shown to have been clearly erroneous in holding that counsel for plaintiff had had "substantial responsibility" over area in question so as to come within canon prohibiting lawyer from accepting private employment in matter in which he had substantial responsibility while he was public employee, and disqualification on such count was amply supported by authority. Taxpayers, Homeowners and Tenants Protective Ass'n, Inc. v. Haber, 1981, 634 F.2d 182. Attorney And Client ¶21.5(2)

Attorney, who was formerly employed in office of Regional Counsel of the Internal Revenue Service and who handled income tax claims against defendants which resulted in settlements and entry of stipulated decisions, was disqualified from representing defendants in subsequent suits for foreclosure of liens for balance due on those income taxes and for other federal taxes. U.S. v. Trafficante, 1964, 328 F.2d 117. Attorney And Client ¶21.5(2)

11. --- Defense attorney in criminal case, disqualification

For disqualification of an attorney under former Canon 9 of the Florida Code of Professional Responsibility in a criminal action, there need not be proof of actual wrongdoing; there must be at least a reasonable possibility that some specifically identifiable impropriety did in fact occur, and a court must also find that likelihood of public suspicion or obloquy outweighs social interest which will be served by a lawyer's continued participation in a particular case. U. S. v. Hobson, C.A.11 (Fla.)1982, 672 F.2d 825, rehearing denied 677 F.2d 117, certiorari denied 103 S.Ct. 208, 459 U.S. 906, 74 L.Ed.2d 166. Criminal Law ¶1823

Defendant, whose attorney was disqualified from representing him, was not free to waive any ethical problems in order to have benefits of his attorney's continued representation because alleged ethical violations involved public perception of the attorney and legal system rather than some difficulty in attorney's effective representation of defendant. U. S. v. Hobson, C.A.11 (Fla.)1982, 672 F.2d 825, rehearing denied 677 F.2d 117, certiorari denied 103 S.Ct. 208, 459 U.S. 906, 74 L.Ed.2d 166. Criminal Law ¶1823

Expectations that witnesses' testimony would portray defendant's attorney as having engaged in thoroughly improper and unethical conduct due to his knowledge of marijuana smuggling operation for which defendant was being tried and thus impugn severely attorney's integrity and credibility in eyes of jury outweighed defendant's interest in being represented by the attorney and warranted disqualification. U. S. v. Hobson, C.A.11 (Fla.)1982, 672 F.2d 825, rehearing denied 677 F.2d 117, certiorari denied 103 S.Ct. 208, 459 U.S. 906, 74 L.Ed.2d 166. Criminal Law ¶1823

Defense counsel's prior representation of state's witness warranted disqualification of counsel from representing de-

defendant, even though defendant consented to representation and even if counsel's representation of state's witness had terminated; witness did not consent to representation, subject matter of counsel's representation of defendant was substantially related to subject matter of counsel's representation of witness, and interests of witness were adverse to those of defendant. U.S. v. Miranda, S.D.Fla.1996, 936 F.Supp. 945. Criminal Law ¶1787; Criminal Law ¶1791

Use of "back up" counsel to handle matters related to state's witness was not an appropriate alternative to disqualification of defense counsel, who had previously represented witness in substantially related matter, from representing defendant. U.S. v. Miranda, S.D.Fla.1996, 936 F.Supp. 945. Criminal Law ¶1787

Actual conflict of interest required disqualification of attorney from representation of defendant in prosecution for conspiracy to distribute cocaine, despite defendant's willingness to waive conflict, as vigorous representation of defendant would require attorney to act in manner adverse to interests of his former clients; attorney represented one former client in matter that led to his cooperation in defendant's prosecution, and attorney represented second former client in state cocaine proceeding for conduct which was "part-and-parcel" of conspiracy charge in defendant's prosecution. U.S. v. Culp, M.D.Fla.1996, 934 F.Supp. 394. Criminal Law ¶1791

Lawyer's duty to preserve client confidences survives termination of lawyer-client relationship. U.S. v. Culp, M.D.Fla.1996, 934 F.Supp. 394. Attorney And Client ¶32(13)

Attorney who had worked for public defender's office when defendant was convicted but who worked for attorney general at time of appeal was not disqualified from working on appeal of conviction due to possible appearance of impropriety; attorney did not represent defendant or receive any confidential information on case while at public defender's office, strategies at trial and upon appeal are differing and trial court information would be of little value in appellate process. Colton v. State, App. 1 Dist., 667 So.2d 341 (1995), review denied 670 So.2d 937. Criminal Law ¶1694

12. --- Attorney-client relationship, disqualification

In determining whether attorney-client relationship existed, for purposes of disqualification of counsel from later representing opposing party, a long-term or complicated relationship is not required, and court must focus on subjective expectation of client that he is seeking legal advice. McPartland v. ISI Inv. Services, Inc., M.D.Fla.1995, 890 F.Supp. 1029. Attorney And Client ¶21

In determining whether attorney-client relationship existed, for purpose of determining whether counsel is disqualified from representing former client's opponent, court should focus on subjective expectation of client that he was seeking legal advice, in order to safeguard his individual belief and reliance. Smalley Transp. Co. v. Prime Computer, Inc., M.D.Fla.1991, 137 F.R.D. 397. Attorney And Client ¶21

Rule of professional conduct that barred an attorney from representing someone against a former client, and from using information relating to the representation against a former client, did not bar attorney to whom automobile passenger was referred from representing passenger in action against driver arising out of a collision with a truck, even though referring attorney represented both passenger and driver with respect to claims against driver's insurer and truck driver; attorney to whom passenger was referred never represented driver. Manning v. Cooper, App. 4 Dist., 981 So.2d 668 (2008). Attorney And Client ¶21.5(1)

In considering whether attorney-client privilege applies so as to disqualify attorney from opposing former client, focus is on perspective of person seeking out the lawyer, not on what the lawyer does after the consultation. Lane v. Sarfati, App. 3 Dist., 676 So.2d 475 (1996), rehearing denied. Attorney And Client ¶21

Attorney was disqualified due to conflict of interest from representing university's former workers' compensation insurance carrier in action in which carrier was seeking reimbursement from university; attorney/client relationship existed between attorney and university when attorney represented university and carrier in workers' compensation settlement proceeding involving same claimant respecting earlier claim. University of Miami v. Dansky, App. 1 Dist., 622 So.2d 613 (1993). Attorney And Client ¶21.5(5)

13. --- Agreement to restrict representation, disqualification

Rule of professional responsibility prohibiting lawyers from participating in making employment agreements restricting a lawyer's right to practice was intended to prevent lawyers from entering into agreements that operate to restrict a lawyer's right to practice generally, but did not reach agreements with or by the client to preclude the lawyer's representation of other persons with respect to cases that involve the same facts, transactions, and events as the case settled for the client. Lee v. Florida Dept. of Ins. and Treasurer, App. 1 Dist., 586 So.2d 1185 (1991). Attorney And Client ¶20.1

A client's agreement to a settlement provision prohibiting participation by its attorney and his law firm in administrative proceedings to revoke an insurance agent's license manifested the client's intent to preclude use or disclosure of information gained by attorney during his representation and thus demonstrated sufficient adversity of interest to apply rules regarding conflicts of interest and disqualification. Lee v. Florida Dept. of Ins. and Treasurer, App. 1 Dist., 586 So.2d 1185 (1991). Attorney And Client ¶20.1

General lines insurance agent who was party to a settlement agreement with insurance industry group which contained a provision precluding group's attorney from participating in administrative proceedings involving agent's general lines insurance license, had standing to object to representation of Department of Insurance by group's attorney's former associate in disciplinary proceeding, by virtue of his position as a beneficiary of settlement agreement. Lee v. Florida Dept. of Ins. and Treasurer, App. 1 Dist., 586 So.2d 1185 (1991). Attorney And Client ¶21.20

14. --- Former representation of witness, disqualification

Defense attorney's former representation of prior defendant who became star government witness presented inconsistent interest, involved serious potential for conflict impeding trial and reflecting on integrity of judicial system, and justified disqualification of attorney, even if another attorney cross-examined witness; attorney's relationship with witness was substantial and grew from same criminal activity that was subject of indictment. U.S. v. Perez, S.D.Fla.1988, 694 F.Supp. 854. Criminal Law ¶1787

15. --- Former representation of parties, disqualification

No more than minimal risk of disclosure of actual client confidences arose from collaboration between attorneys that would mandate disqualification of plaintiff's counsel in copyright action for alleged appearance of impropriety after counsel communicated with law firm that defendant had initially consulted upon receipt of complaint; attorney initially consulted did not communicate any confidential information that defendant divulged to her, confidential files were not made available to plaintiff's counsel, and initial firm withdrew as co-counsel for plaintiff three days after preliminary pretrial conference. Baybrook Homes, Inc. v. Banvan Const. & Development, Inc., M.D.Fla.1997, 991 F.Supp. 1440. Attorney And Client ¶21.15

Law firm initially consulted by defendant in copyright litigation and law firm that ultimately represented plaintiff could not be considered a single "firm" for purposes of determining whether defendant's initial consultation with attorney in one firm could be imputed to plaintiff's counsel, who had discussed case with attorney's law firm; plaintiff's

counsel had no access to confidential information held by attorney's firm, and firms did not share office space or present themselves as single entity. Baybrook Homes, Inc. v. Banyan Const. & Development, Inc., M.D.Fla.1997, 991 F.Supp. 1440. Attorney And Client 21.15

Under Florida law, corporation and purchaser of all of corporation's stock pursuant to its Chapter 11 plan were same corporate entity, for purposes of determining whether law firm's prior representation of corporation in securities action disqualified firm and its attorneys from representing securities transfer agent in purchaser's adversary proceeding alleging that agent had knowingly participated in debtor's "pump and dump" scheme, even though corporation changed its name after stock purchase. In re Skyway Communications Holding Corp., Bkrctv.M.D.Fla.2009, 415 B.R. 859. Attorney and Client 21.5(3)

Under Florida law, for matters to be "substantially related," for purposes of determining whether attorney's prior representation of former client in one matter precludes its representation of opposing party in subsequent litigation, they need only be akin to present action in way reasonable persons would understand as important to issues involved. In re Skyway Communications Holding Corp., Bkrctv.M.D.Fla.2009, 415 B.R. 859. Attorney and Client 21

Under Florida law, corporation's current fraudulent transfer action alleging that its former securities transfer agent had knowingly participated in "pump and dump" scheme was substantially related to prior securities action against corporation, and thus agent's attorney's representation of corporation in securities action disqualified it from representing agent in fraudulent transfer action, where both actions were based on same misrepresentations, and both actions alleged that misrepresentations were intended to lead to sale of corporation's stock to new investors. In re Skyway Communications Holding Corp., Bkrctv.M.D.Fla.2009, 415 B.R. 859. Attorney and Client 21.5(3)

Under Florida law, attorney-client relationship that existed between counsel and former client need not have been long-term or complicated, in order to trigger obligation on part of counsel not to represent interest adverse to those of former client in the same or a substantially related matter. In re Weinhold, Bkrctv.M.D.Fla.2007, 380 B.R. 848. Attorney And Client 21

Insureds who were sued by insurer for breach of contract and other claims arising out of a \$77,000 insurance payment made by insurer for damages to an insured vessel that sank lacked standing to seek disqualification of insurer's counsel on the ground that counsel had previously represented a different insurer in litigation relating to insureds' claim for damages to the same sunken vessel; counsel never represented insureds, so as to have been privy to confidential information, and counsel did not switch sides in violation of the Rules of Professional Conduct, but rather always occupied an adversarial position with respect to insureds. Continental Cas. Co. v. Przewoznik, App. 3 Dist., 55 So.3d 690 (2011). Attorney and Client 21.20

Judge of Compensation Claims (JCC) had jurisdiction to rule on motion by employer/carrier (E/C) to disqualify law firm representing claimant in workers' compensation proceeding, even if JCC had no express statutory authority to enforce the Rules of Professional Conduct; JCC's statutory authority to do all things conformable with law gave it jurisdiction to determine whether the Rules required the disqualification of law firm that hired attorney who had previously represented the E/C. Matrix Employee Leasing, Inc. v. Pool, App. 1 Dist., 46 So.3d 1147 (2010). Attorney And Client 21.20

Trial court did not depart from the essential requirements of law by disqualifying attorney who previously represented homeowners association from representing property owners in action against association arising out of a claim of lien filed by association against owners' property due to their refusal to pay speeding tickets incurred by their guests and contractors; association alleged that attorney was involved in substantially related matters while representing association, in that he drafted association's governing documents that allowed for imposition of the lien, and owners did not dispute association's allegations or otherwise file response contesting the disqualification motion. Estright v. Bay Point Improvement Ass'n, Inc., App. 1 Dist., 921 So.2d 810 (2006). Attorney And Client 21.5(1)

Disqualification of counsel, contrary to the wishes of counsel and client, should be resorted to rarely. Herschowsky v. Guardianship of Herschowsky, App. 4 Dist., 890 So.2d 1246 (2005). Attorney And Client ¶19

Attorney represented both employer and its workers' compensation claims servicing agent, and thus attorney could not represent employer in its suit against agent alleging that agent improperly handled and adjusted workers' compensation claims to increase its fees, as attorney signed documents representing himself as attorney for agent, and agent essentially acted as an excess carrier and was responsible for any award over \$500,000, such that interests of both employer and agent were at risk in claims attorney defended, even though there was no evidence of any case in which \$500,000 amount had ever been reached. Travelers Ins. Co. v. Burger King Corp., App. 3 Dist., 791 So.2d 1171 (2001), rehearing denied. Attorney And Client ¶21.5(4)

Disqualification of attorney from representing client in action against Department of Insurance, based on alleged conflict of interest, was premature and was not warranted, even though client hired his legal counsel from firm which had also been outside counsel for corporation involved in current litigation, since discovery had not yet been conducted, and it was uncertain to what level and upon what specific matters law firm lawyers participated in previous proceeding and to what extent they would have to testify in current litigation. Russakoff v. State, Dept. of Ins., App. 1 Dist., 724 So.2d 582 (1998), rehearing denied. Attorney And Client ¶22

Attorney's representation of a wife in dissolution proceeding was a conflict of interest and in violation of disciplinary rules, where attorney had previously represented both the husband and wife in a declaratory judgment action against Department of Lottery. The Florida Bar v. Wilson, 714 So.2d 381 (1998), rehearing denied, reinstatement granted 814 So.2d 443. Attorney And Client ¶21.5(1); Attorney And Client ¶44(1)

16. --- Cotrustees of estate, disqualification

Law firm that previously represented one cotrustee of estate was disqualified from defending the other cotrustee and beneficiaries in action alleging breach of fiduciary duty; appearance of impropriety was created in form of undermining of loyalty and trust upon which attorney-client relationship was based. Brent v. Smathers, App. 3 Dist., 529 So.2d 1267 (1988). Attorney And Client ¶21.15

17. --- Substantially related matter, disqualification

Adverse matter in which attorneys represented cigar manufacturer against second manufacturer, alleging antitrust and trademark violations, was not substantially related to joint matter in which attorneys represented both manufacturers against state, challenging restrictions on marketing of tobacco products, as would necessitate disqualification of attorneys in adverse matter under Florida bar rules as adopted by district court. General Cigar Holdings, Inc. v. Aitadis, S.A., S.D.Fla.2001, 144 F.Supp.2d 1334. Attorney And Client ¶21.5(3)

Proscription against successive representation is triggered when representation of former and present client involve same or substantially related matter. U.S. v. Culp, M.D.Fla.1996, 934 F.Supp. 394. Attorney And Client ¶21

For matters in prior representation to be "substantially related" to present representation for purposes of motion to disqualify counsel, matters need only be akin to present action in way reasonable persons would understand as important to the issues involved. McPartland v. ISI Inv. Services, Inc., M.D.Fla.1995, 890 F.Supp. 1029. Attorney And Client ¶21

For purposes of motion to disqualify defendants' counsel, prior representation of plaintiff in obtaining funding through drafting and issuance of offering memoranda was substantially related to present action involving agreement to pay

plaintiff specified amounts for services and products provided by plaintiff to defendant, in that it was not unreasonable that customer might consider financial stability and wherewithal of supplier when contracting to purchase goods and services over extended period. McPartland v. ISI Inv. Services, Inc., M.D.Fla.1995, 890 F.Supp. 1029. Attorney And Client 21.5(1)

Products liability suit in which attorney represented plaintiff motorcyclist was "substantially related" to prior products liability suit in which attorney had represented defendant motorcycle manufacturers, thus warranting disqualification of attorney; both present action and prior action involved crashworthiness, in prior action attorney had received information he would not have received but for fact that he had represented, and attorney became aware of practices used by defendant in fighting products liability actions. Contant v. Kawasaki Motors Corp., U.S.A., Inc., M.D.Fla.1993, 826 F.Supp. 427. Attorney And Client 21.5(1)

Attorney's representation of computer fraud plaintiff in prior computer-related matter was not substantially related to instant action, and thus attorney would not be disqualified from representing defendant; different computer systems were involved in the suits, and there was no showing that counsel had received information from plaintiff which bore even peripherally on instant case. Smalley Transp. Co. v. Prime Computer, Inc., M.D.Fla.1991, 137 F.R.D. 397. Attorney And Client 21.5(1)

In order to establish that party will be prejudiced by former counsel's representation of opponent, and thus that counsel should be disqualified, party need not identify specific confidences which were revealed to former counsel, but only that matters in prior and present actions are substantially related; once substantial relationship is shown, irrebuttable presumption arises that confidential information was disclosed, and counsel will be disqualified. Smalley Transp. Co. v. Prime Computer, Inc., M.D.Fla.1991, 137 F.R.D. 397. Attorney And Client 21; Attorney And Client 21.20

Avoidance proceeding in which law firm appeared as counsel to non-debtor defendants was "substantially related" to firm's earlier representation of creditor in the same Chapter 11 case, in filing \$840,000 proof of claim on creditor's behalf, and firm, in representing defendants in avoidance proceeding that promised to produce recovery to fund distribution on creditor's claim, was also representing interests "adverse" to those of creditor, its former client, such that firm had to be disqualified from representing transfer avoidance defendants. In re Weinhold, Bkrctv.M.D.Fla.2007, 380 B.R. 848. Attorney And Client 21.5(6)

Whether two matters are "substantially related," for purpose of Florida Bar Rule prohibiting attorney from representing an interest materially adverse to those of former client in substantially related matter, depends upon specific facts of each particular situation or transaction. In re Weinhold, Bkrctv.M.D.Fla.2007, 380 B.R. 848. Attorney And Client 21

Although Florida's "substantially related" test is only applicable in determining whether an attorney may properly accept employment against a former client, attorney's conduct in a dual representation situation must be measured not so much against similarities in the litigation as against the duty of undivided loyalty which the attorney owes to both clients. In re Jet 1 Center, Inc., Bkrctv.M.D.Fla.2004, 310 B.R. 649. Attorney And Client 20.1

Real estate matters in which attorneys had represented bankruptcy debtor following their employment as special counsel were not "substantially related" to work that they currently performed for former principal of debtor threatening debtor's reorganization, within meaning of Florida Rule of Professional Conduct prohibiting attorney from representing another person in same or substantially related matter in which that person's interests are materially adverse to those of former client. In re Servico, Inc., Bkrctv.S.D.Fla.1993, 149 B.R. 1009. Attorney And Client 21.5(6)

Trial court in mother's action against son, daughter-in-law, and family corporation could not disqualify corporation's

long-time attorney from representing son, daughter-in-law, and corporation absent evidence that attorney's prior representation of mother, and of corporation when she was a shareholder of it, was substantially related to the matters that were the subject of her lawsuit. Waldrep v. Waldrep, App. 4 Dist., 985 So.2d 700 (2008). Attorney And Client 21.5(3)

Former lawyer's prior representation of nursing home in other similar negligence cases was not in the "same or substantially related matter" involved in instant negligence suit against nursing home, as required to disqualify lawyer from representing nursing home in current action; although prior suits also concerned pressure ulcers and falls, current case was wholly distinct from prior suits and involved different set of facts. Health Care and Retirement Corp. of America, Inc. v. Bradley, App. 4 Dist., 961 So.2d 1071 (2007), rehearing denied, review granted 980 So.2d 489, review dismissed as improvidently granted 997 So.2d 400. Attorney And Client 21.5(1)

Representation of husband in dissolution proceeding by attorney who previously had represented husband and wife jointly in matters relating to their business, was conflict of interest, where business was marital asset. The Florida Bar v. Dunagan, 731 So.2d 1237 (1999), rehearing denied, reinstatement granted 775 So.2d 959. Attorney And Client 21.5(1)

Whether two legal matters are substantially related, for purposes of determining whether attorney has conflict of interest, depends upon specific facts of each particular situation or transaction. The Florida Bar v. Dunagan, 731 So.2d 1237 (1999), rehearing denied, reinstatement granted 775 So.2d 959. Attorney And Client 20.1

Evidence in attorney disciplinary proceeding was sufficient to support finding that former client did not consent to attorney's representation of former client's husband in dissolution proceeding, as would allow attorney to proceed despite conflict of interest; attorney previously had represented client and her husband in business matter, and did not attempt to gain former client's consent until after she had retained an attorney of her own. The Florida Bar v. Dunagan, 731 So.2d 1237 (1999), rehearing denied, reinstatement granted 775 So.2d 959. Attorney And Client 53(2)

Disqualification of attorney for conflict of interest with former client based on representation three years earlier was not warranted absent specific finding that matters involved in counsel's current representation of plaintiff were substantially related to matters covered by his prior representation of defendant; trial court had found that attorney had not breached any confidentiality of former clients and that none of the post-judgment actions currently undertaken by counsel were related to knowledge he obtained in representing defendants. J.M. Lumber, Inc. v. M.L. Builders, Inc., App. 4 Dist., 706 So.2d 84 (1998). Attorney And Client 21.5(1)

Disqualification of attorney for seaman in Jones Act suits against cruise line was not required by virtue of fact that four years previously attorney, prior to his passing the Florida bar examination, had worked as adjuster-in-training for insurance claims management firm which was local corresponding agent for cruise line's personal injury insurance carrier, where cases which attorney had access to as adjuster had no substantial relation to cases in which his disqualification was sought, and cruise line did not demonstrate that information to which attorney had access to as adjuster gave him an unfair advantage. Royal Caribbean Cruises, Ltd. v. Buenaagua, App. 3 Dist., 685 So.2d 8 (1996), rehearing denied, review denied 697 So.2d 512. Attorney And Client 21.5(5)

Attorney who, while representing defendant in prior suit, made investigation for subsequent suit for plaintiff in which defendant was added as a party subsequent to attorney's withdrawal in prior suit, failed to rebut strong showing of substantial relationship between confidences disclosed to attorney when he represented defendant and expertise at issue in subsequent suit; therefore, attorney was properly disqualified in subsequent suit. Ford v. Piper Aircraft Corp., App. 5 Dist., 436 So.2d 305 (1983), petition for review denied 444 So.2d 417. Attorney And Client 21.5(1)

17.5. --- Expert witnesses, disqualification

Attorney who had discussed case as potential expert for competitors, but was never retained, would be disqualified from later serving as counsel for patent holder as opposing party in same infringement case, pursuant to Florida bar rules; attorney had been privy to confidential information over course of his discussions with competitors, with expectation of continued confidentiality, and such information could have been unfairly used against competitors. Armor Screen Corp. v. Storm Catcher, Inc., S.D.Fla.2010, 709 F.Supp.2d 1309. Attorney and Client ¶21.5(8)

18. --- Standing, disqualification

Opposing counsel may seek counsel's disqualification where conflict of interest clearly calls into question fair or efficient administration of justice. Zarco Supply Co. v. Bonnell, App. 1 Dist., 658 So.2d 151 (1995), rehearing denied. Attorney And Client ¶20.1

Employer against whom action was brought by family members of employee, who were injured in automobile accident while riding with employee in employer's vehicle, had standing to seek disqualification of law firm which represented family members where firm was had initially brought action on behalf of employee as well as family members but had advised employee it could no longer represent employee, and firm after retaining co-counsel filed amended complaint which named employee as defendant, even though employee had consented to continued representation of family members. Zarco Supply Co. v. Bonnell, App. 1 Dist., 658 So.2d 151 (1995), rehearing denied. Attorney And Client ¶21.20

Uninsured motorist insurer of insured, and the uninsured motorist insurers of his employer, had standing to seek disqualification of attorneys who had represented insured and his family in earlier stages of personal injury lawsuit brought against driver of other vehicle in accident resulting in injuries to insured and family members, which continued to represent family members with insured's consent after he was sued by his family, discharged firm and secured other counsel, and which also continued to represent insured and his family in a related medical malpractice case; as insured would have no liability in excess of any available insurance coverage, as a result of the interfamily tort immunity doctrine, action was in reality between family and insurers, and insurers would be at disadvantage in defending suit because of possibility information disclosed by insured to the attorneys could be used to prove insured's negligence. State Farm Mut. Auto. Ins. Co. v. K.A.W., 575 So.2d 630 (1991). Attorney And Client ¶21.20

19. --- Prejudice, disqualification

Law firm should have been disqualified from representing plaintiffs in a vehicular accident action where, after the plaintiffs had retained the firm to represent them in the action, the firm continued to represent the defendant in an unrelated matter and only later indicated to the defendant its desire to represent the plaintiffs, and defendant had initially sought advice from member of the firm relating to the accident; defendant was not required to demonstrate specific prejudice to his case in order to justify disqualification. Junger Utility & Paving Co., Inc. v. Myers, App. 1 Dist., 578 So.2d 1117 (1989). Attorney And Client ¶21.5(1)

Disqualification of law firm from representing family of insured in claim brought by family against insured under uninsured motorist coverage was required after firm had initially represented insured and family in lawsuit against uninsured motorist before claim was made against insured, regardless of whether there was actual prejudice resulting to uninsured motorist insurers as a result of earlier representation; fact that firm had earlier represented insured produced irrefutable presumption that confidences were disclosed, and firm represented both insured and family in related medical malpractice case, creating possibility that further confidences might be disclosed. State Farm Mut. Auto. Ins. Co. v. K.A.W., 575 So.2d 630 (1991). Attorney And Client ¶21.5(5)

20. --- Evidence, disqualification

In order to prevail in a motion to disqualify an attorney for conflicts of interest with a former client, the movant must

establish: (1) the existence of a prior attorney/client relationship with the movant, and (2) that the matters in the pending suit are substantially related to the previous matter or cause of action. Bochese v. Town of Ponce Inlet, M.D.Fla.2003, 267 F.Supp.2d 1240. Attorney And Client ⚡21

As the affidavits filed by the parties, in support of their respective contentions relative to plaintiffs' motion to disqualify attorney and remove him as counsel for defendants on the ground that he had previously represented both parties to the litigation in matters which should now preclude his representing the defendants, did not agree on the issue presented, an evidentiary hearing should have been held on the motion. Holland v. Tenenbaum, App. 4 Dist., 360 So.2d 493 (1978). Attorney And Client ⚡21.20

21. Information relating to representation

While the right of a party to choose his or her attorney is deeply engrained in Florida jurisprudence, that right is not unlimited; a party does not have the right to an attorney possessing confidential information of the adversary so as to provide the party with an unfair informational or tactical advantage. Garfinkel v. Mager, App. 5 Dist., 57 So.3d 221 (2010), rehearing denied, review denied 75 So.3d 1245. Attorney and Client ⚡20.1

Attorney's duty not to disclose client's confidential information continued even past termination of matter for which representation was sought. Elkind v. Bennett, App. 4 Dist., 958 So.2d 1088 (2007), rehearing denied, on subsequent appeal 12 So.3d 235. Attorney And Client ⚡32(13)

A lawyer's work product on a case is "information relating to the representation", within meaning of bar rules on client confidences. Koullisis v. Rivers, App. 4 Dist., 730 So.2d 289 (1999). Attorney And Client ⚡32(13)

21.5. Waiver of privilege

Under Florida law, waiver of attorney-client privilege by corporation's former officers and directors as to all corporate documents in possession of corporation's former attorney's did not waive corporation's right to oppose conflict of interest arising from former attorney's current representation of adverse party in related litigation. In re Skyway Communications Holding Corp., Bkrctv.M.D.Fla.2009, 415 B.R. 859. Attorney and Client ⚡21.10; Privileged Communications and Confidentiality ⚡168

Under Florida law, client's waiver of his attorney-client privilege is not tantamount to waiver of his attorney's conflict of interest. In re Skyway Communications Holding Corp., Bkrctv.M.D.Fla.2009, 415 B.R. 859. Attorney and Client ⚡21.10; Privileged Communications and Confidentiality ⚡168

Officers of corporation who were sued by shareholder waived their right to seek disqualification of shareholder's counsel, who they alleged previously represented the corporation, by failing to move for disqualification until more than two and a half years after shareholder filed suit, despite contention that they asked their previous attorneys to file disqualification motion; officers knew the facts leading to the claimed conflict before lawsuit was filed, nothing in record substantiated the claim that officers asked their former attorneys to seek disqualification, and officers waited a further eight months after their second attorney withdrew before filing pro se motion to disqualify. Zavas-Bazan v. Marcelin, App. 3 Dist., 40 So.3d 870 (2010). Attorney and Client ⚡21.20

A party can waive his right to seek disqualification of the opposing party's counsel by failing to promptly move for disqualification upon learning of the facts leading to the alleged conflict; the rationale behind this rule is to prevent a litigant from using the motion as a tool to deprive his opponent of counsel of his choice after completing substantial preparation of the case. Zavas-Bazan v. Marcelin, App. 3 Dist., 40 So.3d 870 (2010). Attorney and Client ⚡21.20

22. Presumptions

Under Florida law, once existence of attorney-client relationship is established, irrefutable presumption arises that confidences were disclosed during course of that relationship. In re Skyway Communications Holding Corp., Bkrctv.M.D.Fla.2009, 415 B.R. 859. Attorney and Client  21.20

Under Florida law, presumption of shared confidences arose simply upon showing of prior attorney-client relationship between law firm and creditor, when creditor retained law firm to file proof of claim against Chapter 11 estate on creditor's behalf, regardless of extent or complexity of services that law firm provided in filing this proof of claim; accordingly, firm was disqualified from also representing transfer avoidance defendants if record showed that it was thereby representing interest adverse to those of creditor, its former client, and if this representation was the same, or substantially related, to matter in which law firm had represented creditor. In re Weinhold, Bkrctv.M.D.Fla.2007, 380 B.R. 848. Attorney And Client  21.5(6); Attorney And Client  21.20

Under Florida law, upon a showing that attorney-client relationship existed between law firm and former client, there is presumption there was confidential relationship, and that confidential information was transferred to all members of firm, for purposes of determining whether firm should be disqualified from representing adverse interest. In re Weinhold, Bkrctv.M.D.Fla.2007, 380 B.R. 848. Attorney And Client  21.20

Under Florida law, once existence of attorney-client relationship is established, irrefutable presumption arises that confidences were disclosed during course of that relationship, for purpose of determining whether attorney should be disqualified from representing adverse interest. In re Weinhold, Bkrctv.M.D.Fla.2007, 380 B.R. 848. Attorney And Client  21.20

The application of bar rule governing conflicts of interest with former clients creates an irrefutable presumption that confidences were disclosed between the client and the attorney. Waldrep v. Waldrep, App. 4 Dist., 985 So.2d 700 (2008). Attorney And Client  21.20

Trial court was required to apply irrefutable presumption contained in bar rule that confidences were disclosed between nursing home and its former attorney in determining if the attorney was disqualified from representing estate of deceased nursing home resident in action against nursing home for alleged neglect. Health Care and Retirement Corp. of America Inc. v. Bradley, App. 4 Dist., 944 So.2d 508 (2006), rehearing granted. Attorney And Client  21.20

23. Burden of proof

Under Florida law, in order for attorney to be disqualified based on representation of current client whose interests are materially adverse to those of former client, moving party must show that: (1) attorney-client relationship existed, thereby giving rise to irrefutable presumption that confidences were disclosed during relationship, and (2) matter in which law firm subsequently represented interest adverse to former client was same or substantially related to matter in which it represented former client. In re Skyway Communications Holding Corp., Bkrctv.M.D.Fla.2009, 415 B.R. 859. Attorney and Client  21; Attorney and Client  21.20

Under Florida law, because of the irrefutable presumption that client confidences were disclosed, party seeking disqualification of attorney who had previously represented it is not required to show that it suffers from unfair informational disadvantage because of attorney's current representation. In re Skyway Communications Holding Corp., Bkrctv.M.D.Fla.2009, 415 B.R. 859. Attorney and Client  21.20

Under Florida law, former client seeking to disqualify attorney from representing party whose interests are allegedly adverse to those of former client has burden of showing: (1) that he and attorney were in attorney-client relationship,

so as to give rise to irrefutable presumption that confidences were disclosed during that relationship; and (2) that matter in which attorney subsequently represents the interest adverse to former client is the same, or substantially related to, matter in which attorney represented former client. In re Weinhold, Bkrcty.M.D.Fla.2007, 380 B.R. 848, Attorney And Client 21.20

A party seeking to disqualify attorney under rule regarding conflicts of interest with former clients must show that: (1) an attorney-client relationship existed, thereby giving rise to an irrefutable presumption that confidences were disclosed during the relationship; and (2) the matter in which the lawyer subsequently represented the interest adverse to the former client is the same or substantially related to the matter in which it represented the former client. Broin v. Phillip Morris Companies, Inc., App. 3 Dist., 84 So.3d 1107 (2012), rehearing denied, Attorney and Client 21; Attorney and Client 21.20

Before a client's former attorney can be disqualified from representing adverse interests, it must be shown that the matters presently involved are substantially related to the matters in which prior counsel represented the former client. Waldrep v. Waldrep, App. 4 Dist., 985 So.2d 700 (2008), Attorney And Client 21

The party moving to disqualify opposing counsel must show that the matter in which the law firm subsequently represented the interest adverse to the former client is the same matter or substantially similar to the matter in which it represented the former client. Health Care and Retirement Corp. of America Inc. v. Bradley, App. 4 Dist., 944 So.2d 508 (2006), rehearing granted, Attorney And Client 21

24. Sanctions

Three year suspension was warranted for attorney who engaged in misconduct by representing clients with unwaivable conflicts of interest and making misrepresentations to client. The Florida Bar v. Scott, 39 So.3d 309 (2010), rehearing denied, certiorari denied 131 S.Ct. 581, 178 L.Ed.2d 415, Attorney and Client 59.13(3)

Breach by attorney of duty of confidentiality to client that causes damage to client may be enforced by way of action for legal malpractice. Elkind v. Bennett, App. 4 Dist., 958 So.2d 1088 (2007), rehearing denied, on subsequent appeal 12 So.3d 235, Attorney And Client 109

Attorney's conduct in taking on representation which amounted to conflict of interest without former client's consent, and in using information relating to representation of former client to her disadvantage, aggravated by two prior disciplinary actions involving conflict of interest, warranted 91-day suspension. The Florida Bar v. Dunagan, 731 So.2d 1237 (1999), rehearing denied, reinstatement granted 775 So.2d 959, Attorney And Client 59.13(3)

Attorney's dual representation of two corporations, in which he owned stock, with adverse interests in same matter, and use of information obtained in representation of one corporation without its consent, warranted suspension of 91 days and thereafter for indefinite period until he demonstrated proof of rehabilitation, passed multistate professional responsibility examination, and paid costs of disciplinary proceeding. The Florida Bar v. Sofo, 673 So.2d 1 (1996), rehearing denied, Attorney And Client 59.13(7)

Improperly representing client when representation was directly adverse to interests of another client, improperly representing client when attorney's exercise of independent professional judgment was materially limited by attorney's responsibilities to another client, to third person, or by attorney's own interests, and improperly representing client in same or substantially related matter in which that client's interest was materially adverse to interests of former client warranted 30-day suspension from practice of law. The Florida Bar v. Marke, 669 So.2d 247 (1996), Attorney And Client 59.13(3)

Proper forum for determination whether attorney violated Code of Professional Responsibility in representing insured in excess judgment action after representing claimant in action against insured was the state bar, subject to review by the Supreme Court. Government Employees Ins. Co. v. Grounds, App. 1 Dist., 311 So.2d 164 (1975), certiorari discharged 332 So.2d 13. Attorney And Client ↪21.20

25. Attorneys' fees

Opposing party was not entitled to attorney fees for frivolous case based on litigant's good-faith motion to disqualify attorney based on conflict of interest in property dispute, where opposing party hired attorney that had been previously consulted about property at issue by litigant, although litigant had contacted attorney regarding another issue pertaining to property, and litigant had disclosed confidential information regarding property. Rodell v. Narson, App. 3 Dist., 706 So.2d 392 (1998). Costs ↪194.44

Equity prevented attorney from collecting contingent fee for prosecution of claims against former clients, but such conflict of interest was no basis for denying attorney charging lien on recovery from other defendants. Snyderburn v. Bantock, App. 5 Dist., 625 So.2d 7 (1993), review denied 634 So.2d 622. Attorney And Client ↪182(1)

Fee sharing counsel had right to set up attorney's ethical violation of representing new client in substantially similar matter against former client without his consent to defeat attorney's equitable enforcement of fee claim. Snyderburn v. Bantock, App. 5 Dist., 625 So.2d 7 (1993), review denied 634 So.2d 622. Attorney And Client ↪192(1)

West's F. S. A. Bar Rule 4-1.9, FL ST BAR Rule 4-1.9

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West's Florida Statutes Annotated Currentness

Rules Regulating the Florida Bar (Refs & Annos)

Chapter 4. Rules of Professional Conduct (Refs & Annos)

4-1. Client-Lawyer Relationship

→ → **Rule 4-1.10. Imputation of Conflicts of Interest; General Rule**

(a) Imputed Disqualification of All Lawyers in Firm. While lawyers are associated in a firm, none of them shall knowingly represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7 or 4-1.9 except as provided elsewhere in this rule, or unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) Former Clients of Newly Associated Lawyer. When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(c) Representing Interests Adverse to Clients of Formerly Associated Lawyer. 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 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 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(d) Waiver of Conflict. A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in rule 4-1.7.

(e) Government Lawyers. The disqualification of lawyers associated in a firm with former or current government lawyers is governed by rule 4-1.11.

CREDIT(S)

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2006, effective May 22, 2006 (933 So.2d 417); July 7, 2011, effective Oct. 1, 2011 (67 So.3d 1037).

Current with amendments received through 8/15/2012

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