



CLASS 10

Professional Responsibility and Legal Ethics

Conflicts of Interest: Rules Regarding Former Clients (MRPC Rule 1.9)

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



Conflicts of Interest: Rules Regarding Current Clients (MRPC Rule 1.7)

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



QUIZ TIME!



Conflicts of Interest: Imputed Disqualification

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



Imputed Disqualification Exception: The Ethical "Wall"

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

