Articles + Publications | April 1, 2017

The Professional Lawyer (ABA Publication) – Corporate Outside Counsel Policies-Who Do You and Who Can You Represent?

WRITTEN BY

Jessica Kozlov Davis | Hope A. Comisky

Introduction

Landing a corporate client usually is cause for celebration. But what terms and conditions apply to the arrangement? In the early 2000s, when the demand for legal services was high, law firms generally set the terms of the engagement with their corporate clients. Attorneys had freedom to make strategy decisions, identify and research legal issues as they arose, and schedule both internal team meetings and external meetings as appropriate. Billing may have been in 15 minute increments, with clients agreeing to pay for working dinners, cab rides home when working after 7 p.m. and domestic travel in business class.

In the late 2000s, the economy struggled, and competition among law firms for corporate clients intensified. Many corporate clients wanted to take control over reimbursement of expenses. Corporate clients also looked for ways to control the billing for services rendered, even as attorneys continued to work the same demanding hours. The answer was the corporate “outside counsel policy.” Anecdotally, where large law firms may have seen a handful of these policies in any given year in the early 2000s, today most large corporate clients have their own set of outside counsel policies.

Over time, these policies have become increasingly comprehensive and restrictive. They address a wide range of subjects from: 1) the ownership of the client file—the client owns everything; to 2) the level of skill of attorneys providing services—no attorney with less than two years of experience, for example; to 3) the number of attorneys who can attend a single meeting—just one. In some cases, they even require advance approval from in-house counsel before the lead partner at the outside law firm can make substantive decisions—even on issues as routine as whether legal research is appropriate. Sample provisions include:

- With respect to any work product or other material prepared by your Firm for [Company] (Works), [Company] shall have a non-exclusive, worldwide, royalty-free license to reproduce and distribute copies of such Works, to prepare derivative works based on such Works, and to otherwise use such Works.

- Please note that we generally will only approve use of first—and second-year associates for tasks they can perform more competently and cost-effectively than alternative personnel. Use of such associates will not be approved for tasks they cannot handle efficiently due to inexperience, nor will their use be approved for tasks that are simple enough to be performed by lower-cost timekeepers such as paralegals or contract attorneys.
- The Company will not pay for duplicative services performed by different members of the Outside Counsel. Accordingly, without prior approval, the Company should not be billed for time spent by more than one attorney attending the same meeting, conference, conference call, hearing or proceeding, or for time spent training junior lawyers or educating replacements when staffing changes occur. . . .
- . . . Moreover, no legal research—regardless of its nature—that requires more than five (5) hours of work should be undertaken without first discussing with us the specific issue to be researched and the purpose of the project. . . .

And which entity benefits by these rules? Is it just the corporation for which the lawyer is providing services? That is the question this article examines in detail.

Which Corporate Entity Do You Represent?

Model Rule 1.7 and Corporate Affiliates

One of the most complicated areas of professional responsibility in corporate representation is analyzing conflicts of interest. Determining which entity is the "client" is always important, particularly so when a firm is asked to represent a large, international corporation with wholly—and partially-owned subsidiaries or affiliates. If the law firm is asked to represent the interests of one wholly-owned, but third-tier subsidiary, is that company the firm's only client? Or, if the client is a closely-held corporation, does the lawyer servicing the parent company represent its one subsidiary as well?

Comment [34] to Model Rule 1.7 provides a general rule that representation of a corporation does *not* result in representation of affiliates and subsidiaries. It states in pertinent part:

> A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter . . . .

Courts consistently have reinforced the proposition that the existence of an attorney-client relationship with one corporate affiliate does not create, by default, an attorney-client relationship with all corporate affiliates. *See GSI Commerce Solutions, Inc. v. BabyCenter, LLC*, 618 F.3d 204, 210 (2d Cir. 2010) (restating the general proposition that a lawyer who represents a corporation does not, by virtue of that representation, represent any constituent or affiliated organization); *HLP Props., LLC v. Consolidated Edison Co. of N.Y., Inc.*, No. 14 Civ. 01383, 2014 U.S. Dist. LEXIS 147416 (S.D.N.Y. Oct. 16, 2014) (same); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 95-390 (1995) (noting that "whether a lawyer represents a corporate affiliate of his client . . . depends not upon any clear-cut *per se* rule but rather upon the particular circumstances."); *Apex Oil Co., Inc. v. Wickland Oil Co., et al.*, CIV-S-94-1499-DFL-GGH, 1995 U.S. Dist. LEXIS 6398, *5 (E.D. Cal. March 2, 1995) (holding that even

though the entities at issue are co-subsidiaries managed by the same legal department, the co-subsidiaries are not the same client for the purpose of the current client conflicts rule).

Outside Counsel Policies and Corporate Affiliates

The general rule is clear: a lawyer who represents a corporation is not deemed to represent any constituent or affiliated organization. Some corporate outside counsel policies are consistent with this general rule. For example, the outside counsel policy for Company A provides that the law firm's client is only the company and its divisions, which are not independent legal entities. *See, e.g.*, *In re Federal-Mogul Global Inc.*, 411 B.R. 148, 164 (D. Del. 2008) (citing *AK Steel Corp. v. Viacom, Inc.*, 835 A.2d 820, 824 (Pa. Super. Ct. 2003) "[A] division of a corporation is not a separate legal entity capable of being sued . . . [A]n unincorporated association is not a legal entity and has no legal existence."):

> As part of this [engagement], each law firm is required to disclose to Company any actual or potential conflicts of interest that would affect its representation of Company. For purposes of the rules of professional conduct barring or limiting an attorney's representation adverse to the interests of existing or former clients, Company and all of its unincorporated divisions should be deemed the "client" of the firm.

However, Comment [34] to Rule 1.7 contains three exceptions to this general rule:

> . . . [1] unless the circumstances are such that the affiliate should also be considered a client of the lawyer, [2] there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or [3] the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.[1]

Many corporate outside counsel policies fall within exception [2]. Most conflicts of interest provisions in corporate outside counsel policies require that law firms treat all corporate affiliates of the client as the client itself for conflicts purposes. For example, the outside counsel policy for Company B contains a "Conflicts of Interest" provision that states:

> Company greatly values loyalty and good judgment in its law firms, particularly in the area of conflicts of interest. We therefore expect outside counsel to promptly bring any potential conflicts to Company's attention . . . Outside counsel must also perform a conflicts check prior to accepting each matter. All of Company's subsidiaries and affiliates, wherever located, should be considered as clients for conflicts purposes. Outside counsel must advise Company immediately in writing, of any actual or potential representation that may be or become adverse to the interests of Company.

Some outside counsel policies are even broader, requiring any entity "controlled" by the client to be treated as the client itself. For example, Company C's outside counsel policy provides:

> For conflicts purposes, all of the Company's controlled or managed affiliates and subsidiaries are to be considered your client even though they may be separate legal entities. Upon request, the supervising attorney can supply you with a current list of the names of the Company's affiliates and subsidiaries . . . .

Thus, by agreeing to such outside counsel policies, law firms are contractually obligated to follow the requirements of Model Rule 1.7 on conflicts with current clients in situations where that rule otherwise would not apply.[2]

Affiliates as De Facto Clients

The first exception in Comment [34] addresses the situation where entering into an attorney-client relationship with one member of a corporate family will be deemed to create an attorney-client relationship with other members of the corporate family. When faced with this issue, courts have focused on two key factors: the degree of operational commonality between affiliated entities, and the extent to which one depends financially on the other. *See GSI Commerce Solutions, Inc. v. BabyCenter, LLC*, 618 F.3d 204, 201-11 (2d Cir. 2010). In examining the first factor—operational commonality—courts have considered the extent to which entities: 1) rely on a common infrastructure; 2) share common personnel such as managers, officers and directors; and 3) handle responsibility for the provision and management of legal services. *See id.*, 618 F.3d at 211. In considering the second key factor—financial interdependence—courts consider the extent to which an adverse outcome in the matter at issue would result in substantial and measurable loss to the client or its affiliate and the entities' ownership structure.[3] *See id.*

The leading case on this issue is *GSI Commerce Solutions, Inc. v. BabyCenter, LLC*, 618 F.3d 204 (2d Cir. 2010). There, Johnson & Johnson (J&J) engaged a law firm (Firm) to serve as counsel to both J&J and certain J&J affiliates in connection with foreign compliance matters. The engagement letter contained multiple conflicting statements regarding the identity of the client. On one hand, the letter stated that the Firm represented only J&J and none of its "affiliates, subsidiaries, partners, joint venturers, employees, directors, officers, shareholders, members, owners, agencies, departments or divisions." On the other hand, the engagement letter included an advance waiver from J&J allowing the Firm to represent other clients in patent-related proceedings adverse to unspecified J&J affiliates—a waiver only necessary if the Firm considered all J&J affiliates to be clients as well. *Id*. at 206-07. Five years later, the Firm agreed to represent GSI Commerce Solutions, Inc. in a breach of contract claim adverse to BabyCenter, LLC, a wholly-owned subsidiary of J&J. BabyCenter, which was represented by other counsel, moved to disqualify the Firm as counsel for GSI because of its ongoing attorney-client relationship with J&J and, necessarily, also with BabyCenter.

The Second Circuit analyzed the corporate relationship between J&J and BabyCenter and concluded that the "substantial operational commonality" between BabyCenter and J&J required that they be considered the same entity for conflicts purposes:

- BabyCenter substantially relied on J&J for accounting, audit, cash management, employee benefits, finance, human resources, information technology, insurance, payroll, and travel services and systems.
- Both entities relied on the same in-house legal department.
- A member of J&J's in-house legal department served as "board lawyer" for BabyCenter.
- J&J's legal department was involved in the BabyCenter dispute since it first arose, participating in mediation efforts and securing outside counsel for BabyCenter.
- BabyCenter was a wholly-owned subsidiary of J&J, with some overlap in management control.

The Circuit Court summarized its analysis as follows:

> When considered together, these factors show that the relationship between the two entities is exceedingly close. That showing in turn substantiates the view that [the Firm], by representing GSI in this matter, "reasonably diminishes the level of confidence and trust in counsel held by J&J."

Id. at 211-12 (citing *Certain Underwriters at Lloyd's, London v. Argonaut Ins. Co.*, 264 F. Supp. 2d 914, 922 (N.D. Cal. 2003)). The Circuit Court also concluded that the language of the advance waiver diluted the Firm's position that J&J was its only client. *Id.* at 213.

By agreeing to outside counsel policies which require that all affiliates should be treated as clients for conflicts purposes, law firms are forfeiting the freedom the Model Rules provide and eliminating the need to engage in the exacting corporate/affiliates legal analysis. Instead, they are contractually obligating themselves to clear conflicts for any matter adverse to any affiliate or subsidiary of those corporate clients.

Implications

There are numerous practical implications for law firms. First, a "conflict" is created through a contractual obligation and not by a conflict otherwise recognized by Model Rule 1.7, the governing rule on conflicts of interest with current clients. So, for example, honoring the policy, a law firm must request a waiver to handle a transaction for another client with a third-tier subsidiary of the corporate parent which is a firm client for benefits work, only. And the firm has no recourse for a client's unreasonable refusal to grant the waiver. A firm may be turning away business, in the aggregate, which is more valuable than the work being performed for the parent company.

In addition, these provisions create a conflict-checking nightmare for law firms. Many corporate clients have an extensive and constantly-changing lists of affiliates. Corporate structure can change by the day, when a parent acquires new subsidiaries or sells affiliates to other owners. Unless the corporate client agrees to inform the firm of changes in its corporate structure, the law firm must shoulder the substantial burden of updating the affiliate list—and inputting any changes into the conflicts-checking system. Many clients are not proactive about notifying their outside counsel about corporate structure changes, despite the requirements in the outside counsel policies. Overlooking this function may be understandable, as general counsel and other attorneys tasked with coordinating with outside counsel often are involved in many other aspects of the day-to-day management of the relationship or of the company. But, that would not excuse a breach by counsel of the conflict of interest section of the outside

counsel policy. And such a breach exposes the firm to liability under traditional contract principles.

An Example Highlighting the Risks

Consider this series of events: Law Firm handles patent prosecution work for Large Pharmaceutical Company, LPharma. LPharma's outside counsel policy requires Law Firm to treat all LPharma affiliates as clients of Law Firm for conflicts purposes. At the inception of the engagement, Law Firm enters all of the affiliates into its conflict system. Three months later, LPharma buys a thirty percent (30%) interest in Smaller Pharmaceutical Company, SPharma. Law Firm is not notified and has no knowledge of the investment. Six months later, Law Firm is engaged by Other Client to defend litigation against it by SPharma. When Law Firm lawyers appear on the first day of trial, the General Counsel for LPharma is sitting at counsel's table for SPharma. She wants to know why Law Firm is representing Other Client adverse to SPharma's interests. Relying on the outside counsel policy, SPharma immediately moves to disqualify Law Firm.

Where does the fault lie? And does it matter? Law Firm accepted an engagement governed by an outside counsel policy that required it to treat all corporate affiliates as clients of Law Firm for conflicts purposes, no matter how attenuated the affiliation. Law Firm could argue that the client failed in its obligation to notify Law Firm of changes in its affiliate list which excused Law Firm's performance under the policy. Courts, however, generally reject the "blame the client" strategy. Law Firm likely would have to defend a disqualification motion, solely because of the provision in the outside counsel policy,[4] and also could be exposed to contract damages.

Rule 1.7 and Conflicts Associated with a Client's Business Interests

Model Rule 1.7 and Representation of Competitors

The Model Rules provide guidance with respect to a lawyer's representation of business competitors. Comment [6] to Rule 1.7 states, in pertinent part, that "simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients." In addition, comment [24] notes that a lawyer "may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest."

Like the rule with respect to corporate affiliates, courts have consistently upheld the general principle that business interests or economic adversity do not create ethical conflicts of interest under the Model Rules. *See, e.g.*, *Curtis v. Radio Representatives, Inc.*, 696 F. Supp. 729, 736-37 (D.C. 1998) (simultaneous representation of business competitors in separate matters does not create a conflict of interest); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 05-434 (2004), at 140 (direct adversity under Rule 1.7 requires a conflict as to the legal rights and duties of the clients, not merely conflicting economic interests). Even in the area of intellectual property law, where conflicts of interests analysis often requires an examination of the technology at issue, courts have held that the potential legal, ethical and practical problems that may result when a firm represents clients seeking patents in the same subject matter area do not, standing alone, constitute a conflict of interest under Rule 1.7. *See Maling v. Finnegan, Henderson, Farabow, Garrett & Dunner, LLP*, 473 Mass. 336 (Mass. S.J.C. 2015) (no conflict

where a law firm represented two competitors applying for patent protection for products in the same market because the clients were not competing for the same patent, but rather different patents for similar devices).

Outside Counsel Policies and Representation of Competitors[5]

Outside counsel policies impose far greater conflict waiver obligations when representing business competitors. Perhaps in light of this case law, corporations are restricting counsel by contract provisions which either forbid them—based on the concept of "loyalty"—from representing competitors, or requiring that they seek advance approval before doing so. For example, Company W's outside counsel policy is extremely broad and states:

> Furthermore, please advise the supervising attorney: (i) if your firm generally represents a party whose business interests are adverse to the Company, even if that party is not currently in proceedings against the Company; and/or (ii) if your firm represents or proposes to represent another party in a proceeding that is adverse to the Company's business interests, whether or not the Company is a named party in the proceeding.

Company X's outside counsel policy is similar, but at least attempts to identify some of those entities the client deems to be competitors:

> Any actual or potential conflict must be waived by the supervising attorney before outside counsel undertakes or continues representation. Company is likely to consider that a conflict of interest exists if outside counsel were to be retained or engaged by a competitor of Company in the Industry, including, by way of example but not limitation, . . . Company 1, Company 2 or Company 3. Accordingly, outside counsel should obtain the consent of the supervising attorney before accepting such a retainer or engagement.

The outside counsel policy for Company Y exemplifies one of the broadest "business conflict" provisions. It states:

> Conflicts of interest must be disclosed to Company and waived in writing prior to beginning a matter. Company has a broad array of business interests. It is important that you be sensitive both to direct conflicts of interest posed by your representation of Company and other clients and more indirect, issue or policy, conflicts that may arise from your firm's advocacy on behalf of other clients of positions conflicting with Company business interests. We expect to be informed of and consulted with respect to all potential direct and indirect conflicts promptly.
>
> It is also expected that you will advise Company of any positions the firm has taken in the recent past or is presently taking on issues which to your knowledge may be adverse, harmful or otherwise prejudicial to the

> interests of Company in this or another Company matter. This includes, without limitation, decisions taken by your firm before administrative and regulatory agencies and bodies as well as administrative and regulatory issues before other tribunals.

As a final example, Company Z's policy is more succinct, but of equal concern:

> Outside counsel shall seek Company's prior consent in advance of undertaking any work for another company in the rubber, tire or fleet management sectors.

Implications

These provisions create countless issues for law firms. First, whose burden is it to identify the competitors in the same industry? Like the issue with corporate affiliates, corporate clients rarely identify the entities they deem to be competitors, and therefore, are subject to the contractual obligations cited above. If an initial list is provided, it is not regularly updated even though the client, and not the law firm, is in the best position to identify its competitors. Similarly, the task of maintaining an up-to-date list of competitors, to the extent it changes, should fall squarely on the corporate client.

Second, how broad is the list of competitors? Is it limited to those entities who are the same size, in the same market, in the same geographic region as the client? Or is it much broader, including entities across geographic regions and ranging in size without regard to the corporate structure of the actual client? What happens when there is a disagreement between the law firm and the corporate client about whether a particular entity is, in fact, a competitor? How is that dispute resolved?

Third, do these provisions, like the one outlined above in Company Z's outside counsel policy, implicitly require that a law firm violate its duty of confidentiality under Model Rule 1.6 to its other existing or prospective clients? Model Rule 1.6 protects as confidential all "information relating to the representation of a client." While the identity of a client—or the fact of the representation—is not protected by the attorney-client privilege, "the client's name, the fact that the client consulted a lawyer and the general nature of the consultation may nevertheless constitute 'secrets' of the client which the lawyer may not disclose" absent the client's express consent. *See, e.g.*, N.Y. State Bar Ass'n Op. 720 (1999) (analyzing the similar Rule 1.6 in New York); N.Y. State Bar Ass'n Op. 1088 (2016) (same); Model Rules of Prof'l Conduct R. 1.6 (2016). A limited exception to the confidentiality obligation to current clients appears in Model Rule 1.6(b) (7) where disclosure is required to resolve conflicts in certain situations.[6] But the obligations in the outside counsel policies apply in situations far broader than conflicts recognized under the Rules of Professional Conduct. By requiring a law firm to obtain the consent of a corporate client before representing a client deemed a "competitor," the law firm is required to disclose the identity of another client even where the services are wholly unrelated and no actual conflict exists. For example, under these policies, a firm that represents a widget manufacturer in employment matters would have to disclose that engagement if asked to

represent its other widget maker client in connection with a federal investigation—work wholly unrelated to the employment work and not triggering any conflict under Model Rule 1.7. Yet, the second client may well want to keep confidential the fact that it has retained a law firm for advice in connection with such an investigation, as the information may be harmful to the company.

The problem is the same with respect to prospective clients, where a lawyer must maintain as confidential information received from the prospective client which may be significantly harmful to the prospect if disclosed. *See* Model Rules of Prof'l Conduct R. 1.18(b) (2016).

Fourth, do these provisions also unduly restrict a law firm's ability to practice law? The idea that a law firm—particularly a law firm with a diverse client base and multiple areas of expertise—could not represent Credit Card Company A in its litigation while simultaneously representing Credit Card Company B in unrelated corporate work, where no adversity exists, is not tethered to any legitimate risk that a law firm's loyalties would be divided. Indeed, many law firms focus on certain subject matter areas—entertainment law or health law, as examples—in order to develop special expertise to attract clients within that subject matter or industry. Yet, read literally, the outside counsel policies would allow Credit Card Company A to refuse to consent to the law firm's engagement for Credit Card Company B, thus limiting the engagements the law firm can undertake even where no actual conflict exists.

Conclusion

In light of the increasing prevalence of both outside counsel policies generally, and specifically those containing these types of conflicts provisions, law firms must have the appropriate tools to manage these requirements. First, these policies should be reviewed consistently by a centralized staff. Problem areas should be addressed with the clients. These provisions are not always set in stone. Often corporate clients will agree to modified clauses which are less restrictive. For example, a client may realize that treating all of its affiliates and subsidiaries as clients for conflicts purposes is too onerous, and may substitute a short list of the "key" entities. Similarly, after some discussion, a corporate client may well understand that tracking and revealing the engagements of competitors, particularly where there is no relationship to the work the law firm is performing for the corporate client, violates an attorney's confidentiality obligations—obligations the client itself would want the law firm to honor in all circumstances.

In addition, the law firm and client should agree as to which party will be responsible for maintaining lists of affiliates or competitors and how they will be treated in the conflict system. They also should agree upon the schedule for updating—whether monthly, quarterly, bi-annually or annually.

Outside counsel policies should be maintained either with the other engagement documentation for the particular client or centrally in an electronic file to allow for easy access and reference in the event questions arise. This ease of access will facilitate the regular review of the outside counsel policies by the team working for the client to insure compliance with the detailed requirements which cover a wide range of issues.

Maintaining an open dialogue with the client is instrumental to a smooth engagement. Initiating this dialogue upon presentation of the outside counsel policy can and should be done in a responsible and professional manner. Most of these issues can be resolved in a way that satisfies the client as well as the firm. Many in-house corporate

counsel frequently engage law firms, are familiar with the issues they face, and often are willing to accommodate a law firm's considered requests to modify certain policy provisions. The result of this process is a policy with which the law firm can comply and which also upholds the core provisions addressing attorney loyalty and other important interests of the corporate client in its relationship with its outside counsel.

Endnotes

[1] Discussion of the third exception is beyond the scope of this article, but generally arises where there is a likelihood of substantial financial loss to a client as a result of an engagement adverse to one of its affiliates. *See, e.g.*, Mylan Inc. v. Kirkland & Ellis LLP, No. 2:15-cv-00581 (W.D. Pa. June 9, 2015) (disqualifying law firm from representing a party in a hostile takeover of the parent company, Mylan N.V., because firm represented Mylan Inc., a wholly owned subsidiary that was the primary asset of the parent).

[2] Model Rule 1.7(a) provides that a "lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer." The requirements for waiver of that conflict are addressed in Model Rule 1.7(b).

[3] Although some courts have concluded that for conflict purposes representation of a wholly-owned subsidiary corporation is equivalent to representation of its parent (*see, e.g.*, Carlyle Towers Condo. Ass'n, Inc. v. Crossland Sav., FSB, 944 F. Supp. 341, 346 (D. N.J. 1996)), this position appears to be the minority view and is not consistent with the ABA's analysis in Formal Opinion 95-390.

[4] Given the non-controlling ownership interest, it is unlikely the "*de facto*" analysis would support a disabling conflict in this situation. See Section II.C. above.

[5] A positional conflict will exist if a lawyer's action on behalf of one client will materially limit his effectiveness in representing another client in a different case, such as when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. *See* Model Rules of Prof'l Conduct R. 1.7 cmt. [24] (2016). In these circumstances, the clients must waive the conflict. However, as explained in this section, the outside counsel policy provisions at issue here suffer from overbreadth and are designed to define a conflict in much broader terms than the one discussed in comment [24].

[6] Model Rules of Prof'l Conduct R. 1.6(b)(7) provides: "A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: to detect and resolve conflicts of interest from the lawyer's change of employment . . . but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client." The representation of a business competitor alone does not constitute a conflict of interest under the Model Rules, and thus would not fall under this limited exception.

transmission and receipt of it does not constitute, a lawyer-client relationship. This publication is not an endorsement of any particular company, organization, product or service.