

**Rule 1.11 Special Conflicts of Interest for Former and Current Government
Officials and Employees
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)**

- (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public official or employee of the government:
 - (1) is subject to Rule 1.9(c); and
 - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent* to the representation. This paragraph shall not apply to matters governed by Rule 1.12(a).
- (b) When a lawyer is prohibited from representation under paragraph (a), no lawyer in a firm* with which that lawyer is associated may knowingly* undertake or continue representation in such a matter unless:
 - (1) the personally prohibited lawyer is timely screened* from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) written* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule
- (c) Except as law may otherwise expressly permit, a lawyer who was a public official or employee and, during that employment, acquired information that the lawyer knows* is confidential government information about a person,* may not represent a private client whose interests are adverse to that person* in a matter in which the information could be used to the material disadvantage of that person.* As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the personally prohibited lawyer is timely screened* from any participation in the matter and is apportioned no part of the fee therefrom.
- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public official or employee:
 - (1) is subject to Rules 1.7 and 1.9; and
 - (2) shall not:
 - (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment,

unless the appropriate government agency gives its informed written consent;* or

- (ii) negotiate for private employment with any person* who is involved as a party, or as a lawyer for a party, or with a law firm* for a party, in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

Comment

[1] Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule.

[2] For what constitutes a “matter” for purposes of this Rule, see Rule 1.7, Comment [2].

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client. Both provisions apply when the former public official or employee of the government has personally and substantially participated in the matter. Personal participation includes both direct participation and the supervision of a subordinate’s participation. Substantial participation requires that the lawyer’s involvement be of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. Personal and substantial participation may occur when, for example, a lawyer participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

[4] By requiring a former government lawyer to comply with Rule 1.9(c), paragraph (a)(1) protects information obtained while working for the government to the same extent as information learned while representing a private client. This provision applies regardless of whether the lawyer was working in a “legal” capacity. Thus, information learned by the lawyer while in public service in an administrative, policy or advisory position also is covered by paragraph (a)(1).

[5] Paragraph (c) operates only when the lawyer in question has actual knowledge of the information; it does not operate with respect to information that merely could be imputed to the lawyer.

[6] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. Because conflicts of interest are governed by paragraphs (a) and (b), the latter agency is required to screen the lawyer.

Whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13, Comment [6]. See also *Civil Service Commission v. Superior Court* (1984) 163 Cal.App.3d 70, 76-78 [209 Cal.Rptr. 159].

[7] Paragraphs (b) and (c) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[8] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[9] A lawyer serving as a public official or employee of the government may participate in a matter in which the lawyer participated substantially while in private practice or non-governmental employment only if: (i) the government agency gives its informed written consent* as required by subparagraph (d)(2)(i); and (ii) the former client gives its informed written consent* as required by Rule 1.9, to which the lawyer is subject by subparagraph (d)(1).

[10] This Rule is not intended to address whether in a particular matter: (i) a lawyer's conflict under paragraph (d) will be imputed to other lawyers serving in the same governmental agency or (ii) the use of a timely screen will avoid that imputation. The imputation and screening rules for lawyers moving from private practice into government service under paragraph (d) are left to be addressed by case law and its development. See *City & County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th at 847, 851-54 [43 Cal.Rptr.3d 776] and *City of Santa Barbara v. Superior Court* (2004) 122 Cal.App.4th 17, 26-27 [18 Cal.Rptr.3d 403]. Regarding the standards for recusals of prosecutors in criminal matters, see Penal Code § 1424; *Haraguchi v. Superior Court* (2008) 43 Cal. 4th 706, 711-20 [76 Cal.Rptr.3d 250]; and *Hollywood v. Superior Court* (2008) 43 Cal.4th 721, 727-35 [76 Cal.Rptr.3d 264]. Concerning prohibitions against former prosecutors participating in matters in which they served or participated in as prosecutor, see, e.g., Business and Professions Code § 6131 and 18 U.S.C. § 207(a).

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- (b) When a lawyer is prohibited from representation under paragraph (a), no lawyer in a firm* with which that lawyer is associated may knowingly* undertake or continue representation in such a matter unless:
 - (1) the personally prohibited lawyer is timely screened* from any participation in the matter and is apportioned no part of the fee therefrom; and
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- (c) Except as law may otherwise expressly permit, a lawyer who was a public official or employee and, during that employment, acquired information that the lawyer knows* is confidential government information about a person,* may not represent a private client whose interests are adverse to that person* in a matter in which the information could be used to the material disadvantage of that person.* As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the personally prohibited lawyer is timely screened* from any participation in the matter and is apportioned no part of the fee therefrom.
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Comment

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[2] For what constitutes a “matter” for purposes of this Rule, see Rule 1.7, Comment [2].

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client. Both provisions apply when the former public official or employee of the government has personally and substantially participated in the matter. Personal participation includes both direct participation and the supervision of a subordinate’s participation. Substantial participation requires that the lawyer’s involvement be of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. Personal and substantial participation may occur when, for example, a lawyer participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

[4] By requiring a former government lawyer to comply with Rule 1.9(c), paragraph (a)(1) protects information obtained while working for the government to the same extent as information learned while representing a private client. This provision applies regardless of whether the lawyer was working in a “legal” capacity. Thus, information learned by the lawyer while in public service in an administrative, policy or advisory position also is covered by paragraph (a)(1).

[5] Paragraph (c) operates only when the lawyer in question has actual knowledge of the information; it does not operate with respect to information that merely could be imputed to the lawyer.

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Whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13, Comment [6]. See also *Civil Service Commission v. Superior Court* (1984) 163 Cal.App.3d 70, 76-78 [209 Cal.Rptr. 159].

[7] Paragraphs (b) and (c) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[8] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[9] A lawyer serving as a public official or employee of the government may participate in a matter in which the lawyer participated substantially while in private practice or non-governmental employment only if: (i) the government agency gives its informed written consent* as required by subparagraph (d)(2)(i); and (ii) the former client gives its informed written consent* as required by Rule 1.9, to which the lawyer is subject by subparagraph (d)(1).

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[11]¹ The responsibilities of managerial and supervisory lawyers prescribed by Rules 5.1 and 5.3 apply to screening arrangements implemented under this Rule.

¹ The consensus of the drafting team was to add language from proposed Rule 1.10, Comment [5] to proposed Rule 1.11 as a new Comment [11] in response to OCTC's concerns expressed in their public comment letter dated January 9, 2017.

**Rule 1.11 Special Conflicts of Interest for Former and Current Government
Officials and Employees**

- (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public official or employee of the government:
 - (1) is subject to Rule 1.9(c); and
 - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent* to the representation. This paragraph shall not apply to matters governed by Rule 1.12(a).
- (b) When a lawyer is prohibited from representation under paragraph (a), no lawyer in a firm* with which that lawyer is associated may knowingly* undertake or continue representation in such a matter unless:
 - (1) the personally prohibited lawyer is timely screened* from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) written* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule
- (c) Except as law may otherwise expressly permit, a lawyer who was a public official or employee and, during that employment, acquired information that the lawyer knows* is confidential government information about a person,* may not represent a private client whose interests are adverse to that person* in a matter in which the information could be used to the material disadvantage of that person.* As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the personally prohibited lawyer is timely screened* from any participation in the matter and is apportioned no part of the fee therefrom.
- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public official or employee:
 - (1) is subject to Rules 1.7 and 1.9; and
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unless the appropriate government agency gives its informed written consent;* or

- (ii) negotiate for private employment with any person* who is involved as a party, or as a lawyer for a party, or with a law firm* for a party, in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

Comment

- [1] Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule.
- [2] For what constitutes a “matter” for purposes of this Rule, see Rule 1.7, Comment [2].
- [3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client. Both provisions apply when the former public official or employee of the government has personally and substantially participated in the matter. Personal participation includes both direct participation and the supervision of a subordinate’s participation. Substantial participation requires that the lawyer’s involvement be of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. Personal and substantial participation may occur when, for example, a lawyer participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.
- [4] By requiring a former government lawyer to comply with Rule 1.9(c), paragraph (a)(1) protects information obtained while working for the government to the same extent as information learned while representing a private client. This provision applies regardless of whether the lawyer was working in a “legal” capacity. Thus, information learned by the lawyer while in public service in an administrative, policy or advisory position also is covered by paragraph (a)(1).
- [5] Paragraph (c) operates only when the lawyer in question has actual knowledge of the information; it does not operate with respect to information that merely could be imputed to the lawyer.
- [6] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. Because conflicts of interest are

governed by paragraphs (a) and (b), the latter agency is required to screen the lawyer. Whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13, Comment [6]. See also *Civil Service Commission v. Superior Court* (1984) 163 Cal.App.3d 70, 76-78 [209 Cal.Rptr. 159].

[7] Paragraphs (b) and (c) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[8] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[9] A lawyer serving as a public official or employee of the government may participate in a matter in which the lawyer participated substantially while in private practice or non-governmental employment only if: (i) the government agency gives its informed written consent* as required by subparagraph (d)(2)(i); and (ii) the former client gives its informed written consent* as required by Rule 1.9, to which the lawyer is subject by subparagraph (d)(1).

[10] This Rule is not intended to address whether in a particular matter: (i) a lawyer's conflict under paragraph (d) will be imputed to other lawyers serving in the same governmental agency or (ii) the use of a timely screen will avoid that imputation. The imputation and screening rules for lawyers moving from private practice into government service under paragraph (d) are left to be addressed by case law and its development. See *City & County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th at 847, 851-54 [43 Cal.Rptr.3d 776] and *City of Santa Barbara v. Superior Court* (2004) 122 Cal.App.4th 17, 26-27 [18 Cal.Rptr.3d 403]. Regarding the standards for recusals of prosecutors in criminal matters, see Penal Code § 1424; *Haraguchi v. Superior Court* (2008) 43 Cal. 4th 706, 711-20 [76 Cal.Rptr.3d 250]; and *Hollywood v. Superior Court* (2008) 43 Cal.4th 721, 727-35 [76 Cal.Rptr.3d 264]. Concerning prohibitions against former prosecutors participating in matters in which they served or participated in as prosecutor, see, e.g., Business and Professions Code § 6131 and 18 U.S.C. § 207(a).

[\[11\]¹ The responsibilities of managerial and supervisory lawyers prescribed by Rules 5.1 and 5.3 apply to screening arrangements implemented under this Rule.](#)

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- (1) is subject to Rule 1.9(c); and
 - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public ~~officer~~official or employee, unless the appropriate government agency gives its informed written consent, ~~—confirmed in writing, *~~ to the representation. This paragraph shall not apply to matters governed by Rule 1.12(a).
- (b) When a lawyer is ~~disqualified~~prohibited from representation under paragraph (a), no lawyer in a firm* with which that lawyer is associated may knowingly* undertake or continue representation in such a matter unless:
- (1) the ~~disqualified~~personally prohibited lawyer is timely screened* from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) written* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this ~~rule~~.Rule
- (c) Except as law may otherwise expressly permit, a lawyer ~~having~~who was a public official or employee and, during that employment, acquired information that the lawyer knows* is confidential government information about a person ~~—acquired when the lawyer was a public officer or employee, *~~ may not represent a private client whose interests are adverse to that person* in a matter in which the information could be used to the material disadvantage of that person.* As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority ~~and which, that,~~ at the time this Rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and ~~which~~that is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the ~~disqualified~~personally prohibited lawyer is timely screened* from any participation in the matter and is apportioned no part of the fee therefrom.
- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public ~~officer~~official or employee:
- (1) is subject to Rules 1.7 and 1.9; and
 - (2) shall not:

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- (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent, ~~confirmed in writing;~~* or
 - (ii) negotiate for private employment with any person* who is involved as a party, or as a lawyer for a party, or with a law firm* for a party, in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).
- (e) ~~As used in this Rule, the term "matter" includes:~~
- ~~(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and~~
 - ~~(2) any other matter covered by the conflict of interest rules of the appropriate government agency.~~

Comment

[1] Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule.

~~[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.~~

[2] For what constitutes a "matter" for purposes of this Rule, see Rule 1.7, Comment [2].

~~[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.~~

~~[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For~~

~~example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.~~ Both provisions apply when the former public official or employee of the government has personally and substantially participated in the matter. Personal participation includes both direct participation and the supervision of a subordinate's participation. Substantial participation requires that the lawyer's involvement be of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. Personal and substantial participation may occur when, for example, a lawyer participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

[4] By requiring a former government lawyer to comply with Rule 1.9(c), paragraph (a)(1) protects information obtained while working for the government to the same extent as information learned while representing a private client. This provision applies regardless of whether the lawyer was working in a "legal" capacity. Thus, information learned by the lawyer while in public service in an administrative, policy or advisory position also is covered by paragraph (a)(1).

[5] Paragraph (c) operates only when the lawyer in question has actual knowledge of the information; it does not operate with respect to information that merely could be imputed to the lawyer.

~~[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of~~

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~~disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.~~

[56] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. ~~However, because the conflict~~ Because conflicts of interest ~~is~~are governed by ~~paragraph (d)~~paragraphs (a) and (b), the latter agency is ~~not~~ required to screen the lawyer ~~as paragraph (b) requires a law firm to do.~~ ~~The question of whether~~. Whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13, Comment [96]. See also *Civil Service Commission v. Superior Court* (1984) 163 Cal.App.3d 70, 76-78 [209 Cal.Rptr. 159].

[67] Paragraphs (b) and (c) ~~contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures).~~ These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the ~~lawyer's~~lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

~~[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.~~

~~[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.~~

[98] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[9] A lawyer serving as a public official or employee of the government may participate in a matter in which the lawyer participated substantially while in private practice or non-governmental employment only if: (i) the government agency gives its informed written consent* as required by subparagraph (d)(2)(i); and (ii) the former client gives its informed written consent* as required by Rule 1.9, to which the lawyer is subject by subparagraph (d)(1).

[10] This Rule is not intended to address whether in a particular matter: (i) a lawyer's conflict under paragraph (d) will be imputed to other lawyers serving in the same governmental agency or (ii) the use of a timely screen will avoid that imputation. The imputation and screening rules for lawyers moving from private practice into government service under paragraph (d) are left to be addressed by case law and its development. See *City & County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th at 847, 851-54 [43 Cal.Rptr.3d 776] and *City of Santa Barbara v. Superior Court* (2004) 122 Cal.App.4th 17, 26-27 [18 Cal.Rptr.3d 403]. Regarding the standards for

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recusals of prosecutors in criminal matters, see Penal Code § 1424; *Haraguchi v. Superior Court* (2008) 43 Cal. 4th 706, 711-20 [76 Cal.Rptr.3d 250]; and *Hollywood v. Superior Court* (2008) 43 Cal.4th 721, 727-35 [76 Cal.Rptr.3d 264]. Concerning prohibitions against former prosecutors participating in matters in which they served or participated in as prosecutor, see, e.g., Business and Professions Code § 6131 and 18 U.S.C. § 207(a).

[11] The responsibilities of managerial and supervisory lawyers prescribed by Rules 5.1 and 5.3 apply to screening arrangements implemented under this Rule.

~~[10] For purposes of paragraph (c) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.~~

**Proposed Rule 1.11 Special Conflicts of Interest for Former and
Current Government Officials and Employees
Synopsis of Public Comments**

TOTAL = 3 **A = 0**
D = 0
M = 3
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Y-2016-4	League of California Cities (Leary) (09-27-16)	Y	M		Proposed Rule 1.11 establishes specific conflict of interest rules for former and current government attorneys. Because this rule provides clear and necessary guidance to both former and current government lawyers regarding their professional duties, the League fully supports its adoption by the California State Bar's Board of Trustees ("Board"). However, the League urges the Board to modify Proposed Rule 1.11 by substituting "public officer" for "public official." This modification would clarify the scope of the rule, by utilizing terminology that is already well defined in California public agency law, as explained at length in the League's comments to Proposed Rule 4.2.	1. The Commission has not made the suggested change. The use of "public official" rather than "public officer" in this rule is consistent with the similar use in Rule 4.2. Moreover, consistent with the ABA Model Rule, this rule extends more broadly to lawyers who are or were public "employees." Given this breadth, the Commission does not believe that use of the term "public official" will result in confusion.
Y-2016-211	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (01-09-17)	Y	M		1. OCTC generally supports this rule, but has the same concerns regarding use of the term "knowingly" in subsection (b) of this rule as it has for proposed Rule 1.9. This rule appears to exclude an attorney who either does not have a program to check conflicts, or does not	1. The Commission has considered this issue when drafting the rule and determined that the "know" standard is the appropriate standard for this rule. First, it is a national standard, every jurisdiction having adopted it. Second, the definition in

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

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					<p>actually check to determine whether there is a conflict.</p> <p>2. OCTC supports Comments [1], [2], [5], [6], [7], [8], [9], and [10]. While OCTC generally believes that there are too many unnecessary comments in the rules, the complexity of the conflict rules does require several comments.</p> <p>3. Comment [3] does not clarify the rule, but, instead, gives a philosophical basis for the rule.</p> <p>4. Comment [4]’s use of the word “knowingly” in subsection (b) of the rule is problematic for the reasons already discussed about the use of the word “knowingly.”</p>	<p>proposed Rule 1.0.1(f) provides:</p> <p>“Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.</p> <p>The second sentence of that definition prohibits “willful blindness.” Nevertheless, the Commission has added a new comment similar to proposed rule 1.10, cmt. [5], to alert managerial and supervisory lawyers to their duties under rules 5.1 and 5.3 regarding ethical screens.</p> <p>2. No response necessary.</p> <p>3. The Commission continues to believe that Comment [3] provides useful guidance, including in particular guidance and examples as to when participation in a matter is personal and substantial.</p> <p>4. See response in (1) above.</p>
Y-2016-7r	State Bar Standing Committee on Professional Responsibility and	Y	M	Cmt. [2]	We recommend Comment [2] be deleted. As we stated in our comment letter to proposed rule	1. The Commission continues to believe that as a non-exclusive list of examples of

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	Conduct (COPRAC) (Spencer) (1-9-17)				<p>1.7, the definition of “matter” is clearly too narrow in its application to many common situations, such as mediation prior to the filing of a lawsuit or administrative or legislative lobbying. The definition also appears to fall into the category of law-making by Comment that the Supreme Court has disapproved.</p> <p>This definition appears to be a departure from prior law that is not required for national uniformity, since the ABA Model Rules do not contain such a definition.</p>	<p>what is included within the term matter, Comment [2] to Rule 1.7 (cross-referenced by Comment [2] to Rule 1.11) is an appropriate comment. However, the Commission has modified Comment [2] to Rule 1.7 so that the list of examples is not only closer to that contained in current ABA Model Rule 1.11(e), but also is appropriate for use with respect to Rule 1.11 as well.</p>

