2026 Ethics Update: Conflicts of Interest

RPC 1.7. Conflict of Interest: General Rule

- **(a)** Except as provided in paragraph (b), 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.
- **(b)** Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
  - **(1)** each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;
  - **(2)** the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - **(3)** the representation is not prohibited by law; and
  - **(4)** the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

The peculiar relationships between insureds, PEO's, house counsel and outside counsel on the Respondent side in workers' compensation practice justify a fresh look at ethical responsibilities, as new statutes and relationships make conventions fluid. The recent unpublished decision in *Arboleda v. Prop 'n Spoon*, DOCKET NO. A-0085-25 (2026) is a provocative factual scenario for analysis.

In *Arboleda*, Counsel for Respondent first answered for the employer/PEO, and then amended the sworn pleading to adopt the carrier as the client, taking an adverse

position to the original client (Prop 'n Spoon, for whom Paychex was an alter ego). Inherent in the argument of counsel was that no contact had occurred, and no communication exchanged, between the real party in interest, the employer, and the attorney filing a sworn pleading. In fact, the employer may not have ever received any communication at all from the attorney representing it, based on the documents accompanying motions filed in the case. But in the normal course of events, an insurance carrier will send its counsel an investigation file, including statements made by the putative insured, as well as a first report filed pursuant to N.J.S.A. 34:15-99. First reports are generally not discoverable in litigation:

34:15-99 Report not public.

34:15-99. Report not public. The reports of accidents filed with, or transmitted or forwarded to, the Division of Workers' Compensation or the Compensation Rating and Inspection Bureau, shall not be made public, and shall not be open to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by an employee for the recovery of damages.

Assuming a first report was included in the introductory package from insurance carrier to attorney, this means that Respondent counsel received proprietary information that an adverse party generally cannot acquire without great effort, if at all. That alone should have sufficed to raise a question as to whether a conflict of interest would bar an attorney from altering the identity of its client after *receiving* proprietary information from a carrier about a prospective client, let alone acting upon that information. It should be remembered that New Jersey moved in recent years from the 'even the appearance of an impropriety' standard to "the appearance of an impropriety" all the way to requiring an *actual* conflict of interest in many cases.

The argument of counsel in *Arboleda* requires a fresh look at the means of inception of representation. The RPC on point, 1.2, raises questions at least facially as to how insurance company counsel creates its relationship with a "captive' client, an employer which has purchased insurance.

In the context of wages, rate, and immigration status of employees, there are legitimate concerns about the scope of representation of WC counsel on both sides. The recurrent issue of off-the-books employees, undocumented immigrants, and unpaid TDB and UE assessments can implicate a deep divide between a carrier and its insured. The case law teaches us that the duty runs from attorney to employer,

no matter who is paying the bills. Given the recent criminalization of behavior concerning immigration law and the potential for tax liability in both civil and criminal spheres, one must consider whether the employer should be introduces from the inception of representation as to the limited scope of representation of WC counsel, as well as the pitfalls of withholding information about the employer-employee arrangement.

RPC 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

- **(a)** A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify.

Far from an issue of first impression, the relationship between insurance company counsel and employers has been discussed at least since 1969, and produced an Ethics Opinion which, although supplemented, is still our guidepost:

OPINION 165 Conflict of Interest Insurance Policy

Disputed Facts re Coverage

The inquirer submits the following hypothetical set of facts which, in one form or another, is recurrent in the field of defending insurance cases: The Complaint (or Petition in Workmen's Compensation cases)alleges facts which, if true, invoke the duty of the insurance company to defend the insured. The attorney retained by the carrier to defend the matter ascertains facts which suggest that the allegations of the Complaint (or Petition)are not true and that the true facts would expose the insured to liability not covered by the policy. A sample situation; date of accident alleged to be June 1, 1968. The policy was issued on May 30, 1968,and the actual date of the accident was May 25, 1968. The attorney asks whether he may ethically continue in the case and endeavor to prove the true state of facts if hef irst notifies the insured of his intention to do so (to protect the insurance carrier), by this means inviting the insured to secure personal counsel. The New

Jersey Supreme Court in Williams v. Bituminous Casualty Corporation, 51 N.J. 146 (1968), said: Thus the coverage question does not depend upon an issue material to the litigation between the employee and the employer. The resolution of the employee's claim against the employer would not have settled the coverage problem. More than that, if the Division of Workmen's Compensation some how accepted the issue in the trial of the employee's claim against the employer, the carrier could not have asserted its position in the employer's name, for a carrier may not so defend an insured as to leave him liable and uncovered. An attorney, engaged by the carrier to defend in the insured's name, could not ethically seek such a result. See Szabo v. Standard Commercial Body Corp., 221 App. Div. 722, 225 N.Y.S. 332 (3d Dept. 1927)." In A.B.A. Comm. on ProfessionalEthics and Grievances, Opinion 282 (1950), it was held that: The essential point of ethics involved is that the lawyer so employed shall represent the insured as his client with undivided fidelity as required by Canon 6. See also American Employers Ins. Co.v. Goble Aircraft Specialties, 205 Misc. 1066, 1075, 131 N.Y.S. 2d 393, 401 (1954), where the Court said: When counsel, although paid by the casualty company, undertakes to represent the policyholder and files his notice of appearance, he owes to his client, the assured, an undeviating and single allegiance. His fealty embraces the requirement to produce in court all witnesses, fact and expert, who are available and necessary for the proper protection of the rights of his client. The Canons of Professional Ethics make it pellucid that there are not two standards, one applying to counsel privately retained by a client, and the other to counsel paid by an insurance carrier. Adherence to this standard forbids the attorney taking a position adverse to the interest of the insured. However, his duty to the carrier requires that he disclose the situation to it. Obviously, the true state of facts should be established by appropriate judicial proceeding such as the institution of a declaratory judgment suit by the carrier against its insured as well as the plaintiff or petitioner. The attorney may not appear for any of the parties in the declaratory judgment case. See A.B.A. Comm. on Professiona lEthics Informal Opinions 728 (l963), 822 (1965), 873 (1965), 948 (1966). In such a collateral proceeding, all interested parties would have the benefit of independent counsel and the resolution of the disputed facts would ordinarily be binding. Under no circumstances may the original attorney proceed with the defense of the insured in the main case until the disputed facts have been finally determined. If the original action is stayed pending determination of the issue in dispute, the original attorney may, with the consent of both the insured and the carrier, continue as counsel of record for the insured.

The body of ethics opinions and case law in New Jersey does not speak to the inception of the attorney/client relationship between an employer and assigned counsel retained on the basis of an insurance policy. Most, if not all of the cases arose from fee disputes, something that is not relevant in an insurance counsel situation. A

few opinions turn upon conflicts of interest that arise either as a result of coverage disputes or the employment of attorneys previously adverse to a party in litigation. The RPC governing retention, and the Court Rule governing contingencies have little or no relevance.

Does this mean the activities of assigned counsel are somehow irrelevant to ethical precepts? *Arboleda* is a cautionary tale, raising the question of whether Respondent counsel, whether in a PEO or direct insurance coverage situation, should at least communicate their role and secure consent to be retained, prior to the filing of a sworn pleading on behalf of a stranger, whether individual or business entity. Not only is confidential information shared with counsel unknown to the insured, but the scope of representation is limited, implicating immigration law, criminal law, tax law, and other areas in which the narrow workers' compensation representation does not extend.

Conflicts of Interest

Do I Have One? If So, Can I Cure It?

by David H. Dugan III

Conflicts of interest abound in the practice of law. They may be present before representation begins, or may arise during representation. They may involve simultaneous representation or representation that is successive. They may extend from one lawyer to include, by imputation, an entire firm. They may be the subject of disciplinary charges or malpractice liability or motions to disqualify. Some are curable by client consent. Some are curable by screening. Some are not curable by any means.

Conflicts of interest law is complex and diverse. Although the relevant Rules of Professional Conduct (RPC 1.7 through 1.14) provide a helpful framework, they are difficult to apply because they are loaded with terms requiring attorney judgment and discretion, such as "reasonably believes," "full disclosure," "reasonable opportunity," "substantial risk," "substantially related matter," and so forth. The law's diversity results from court decisions and advisory committee opinions going back many years, which have not been always anchored in code rules and vary in their focus. Many of the court decisions are in response to disqualification motions, and many conclude by prohibiting representation where the conflicts are not actual but only potential in character.[1]

The advisory committee opinions raise problems for other reasons. First, many, particularly older ones, do not constitute carefully written expressions of what the rules prohibit, but instead are expressions of what, on a somewhat higher plane, a lawyer would be wise to refrain from doing. Second, many reference the appearance of impropriety standard, which the Supreme Court discarded in its 2004 revisions to the Rules of Professional Conduct. Without the appearance of impropriety standard, New Jersey's conflict of interest code law is considerably less vague. Not only that, but it can be said that the New Jersey code now prohibits only actual conflicts of interest. The code continues to prohibit imputed conflicts under RPC 1.10. But, the conflicts that are imputed are the actual ones prohibited under other rules, chiefly RPC 1.7 and RPC 1.9.

In considering conflicts, some confusion can arise from the word "risk:" RPC 1.7(a)(2) speaks of "significant risk;" RPC 1.8(k) speaks of "substantial risk." A risk of conflict is not a potential future conflict. Rather, the risk is a present fact. What remains potential is any actual harm to the relationship between lawyer and client and the effectiveness of the lawyer's representation.[2] This interpretation is consistent with the New Jersey Supreme Court's decision to abolish RPC 1.7(c), which spoke of "situations creating an appearance of impropriety rather than an actual conflict." The intention is to narrow the rules to prohibit only actual conflicts, with significant risk or substantial risk referencing a present situation, not a potential one.

In general, three categories of conflicts are proscribed: concurrent conflicts (RPC 1.7 and 1.8); conflicts involving former clients (RPC 1.9); and imputed conflicts (RPC 1.10). In each of these categories, provision is made for curing most conflicts with client consent. Imputed conflicts involving former clients may also be cured in some situations by screening, even without client consent. This article is limited to the topic of concurrent and *per se* conflicts under RPC 1.7.

Identifying Concurrent Conflicts

RPC 1.7(a) refers to "concurrent" (*i.e.*, contemporaneous) conflicts of two sorts, derived from former RPC 1.7(a) and (b): conflicts involving "directly adverse" client interests and conflicts involving representation that is "materially limited" by the lawyer's responsibilities to others or by the lawyer's own interests.[3]

Directly Adverse Interests

Typically, directly adverse situations are obvious. Opposing parties in litigation—a buyer and seller, or an employer and employee—are examples. Some adverse situations are not as obvious, such as where a lawyer represents one client against a party the lawyer simultaneously represents in another matter, even though the two matters may be completely unrelated.[3] And, some directly adverse situations develop later in the course of what may have been a conflict-free representation, such as where a lawyer represents the maker and guarantor of a note when a loan is negotiated, but later is asked to defend both in collection proceedings brought by the payee.[4]

Materially Limited Representation

By comparison, "materially limited" situations tend to be more difficult to identify, for three reasons. First, the terminology is less precise. "Significant risk" and "materially limited" are terms requiring considerable sensitivity and discretion in their application. Second, the scope is broader. Interests to be evaluated include not only other contemporaneous clients but also former clients, third persons and the lawyer's own interests. Third, the elimination of the appearance of impropriety from the code calls into question many, if not most, of the existing New Jersey court and advisory committee conflict of interest rulings that would otherwise provide guidance in materially limited situations, since these rulings so often cite the appearance of impropriety standard in support of their holdings.

Despite such analytical difficulties, some of the more widely recognized materially limited situations include representing co-plaintiffs or co-defendants in litigation; representing multiple parties to a negotiation (such as formation of a joint venture); representing several family members (or even simply a husband and wife) in estate planning; representing a lawyer in one matter while both lawyers also represent adverse parties in other litigation and the old standby, representing both an insurance company and the insured. Identification of materially limited conflicts can be especially difficult in non-litigation matters.[5]

Critical Recordkeeping

Identification of conflicts requires that law firms maintain detailed records of conflict data, including the names of all clients and prospective clients, former clients and former prospective clients, organizations with which the lawyers in the firm are affiliated, law firms with which firm lawyers were formerly associated, lawyers in other firms or organizations who have family ties to lawyers in the firm, and so forth. When prospective clients are first interviewed, forms should be completed containing the names of the prospective clients, adversaries and adverse law firms, and that data should be compared with the firm's conflict data records before the firm agrees to any new representation.

When a conflict search produces a match, a conflict determination must be made, preferably by a lawyer or lawyer-committee in the firm having some expertise in ethics law. The determination process should include not only whether an actual conflict exists but also, if there is a conflict, whether and how to resolve it by client consent (or, in former client conflicts under RPC 1.9, by screening). Note that this same process should be invoked again any time a new party or adversary counsel becomes part of the case, or when a new lawyer joins the firm.

Curing Concurrent Conflicts

RPC 1.7(b) allows for the curing of concurrent conflicts. The curing process involves two elements: 1) client consent to the conflict, and 2) the lawyer's belief that the representation will not be impaired by the conflict.[7]

Client Consent

Regarding the consent element, each affected client must consent. This includes former clients as well as current clients, but not third parties. The consents must be informed. "Informed consent" is defined in RPC 1.0(e) as follows:

> the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

RPC 1.7(b) requires that the consents be "confirmed in writing, after full disclosure and consultation," and if the conflict involves multiple clients in a single matter, the consultation "shall include an explanation of the common representation and the advantages and risks involved." The rule does not specify what is to be included in each client's written confirmation. Presumably, at a minimum, the writing must contain a simple statement of the facts constituting the conflict, a reference to there having been a consultation with the lawyer, and a confirmation of consent by the client. The written document also should be signed by the client. The rule does not state when such consent must be obtained, but consent should be obtained before the conflicting representation commences.

In practice, counsel may wish to set forth in the consent document a fuller statement of what disclosures were made and what explanations were given in terms of the common representation, the advantages, the risks and the available alternatives. Counsel also might provide the client with the basis for the lawyer's belief that he or she will be able to provide competent and diligent rep-

resentation to each affected client. If there is a possibility that future events might render the lawyer unable to continue the multiple representation, counsel's disclosure should indicate that in such circumstances he or she would have to withdraw completely from the representation.

The Supreme Court also has recommended a further step: When representing co-clients, counsel should obtain from the clients an agreement on the sharing of confidential information that may come to the lawyer's attention during the representation.[8] The Court left it to counsel and their clients to decide whether such information should be shared or kept confidential, but as a practical matter, the lawyer's preference should be for such information to be shared.

RPC 1.7(b) does not state whether a consent, once given, may later be revoked. Comment 21 to the American Bar Association Model Rules of Professional Conduct opines that a client should be able to revoke the consent, since clients generally may terminate representation at any time for any reason. The difficult issue, however, is whether the lawyer may continue with the representation of the other client or clients. Here, Comment 21 hedges, indicating that it would depend upon the circumstances.

The Lawyer's Belief

Turning to the second curing element, the lawyer also must believe that he or she will be able to provide competent and diligent representation to each affected client. Competence and diligence are duties imposed by RPC 1.1 and 1.3. Although the New Jersey rule and the model rule of RPC 1.3 are identical, the two versions of RPC 1.1, both new and former, are very different. The model rule speaks of competence as "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The New Jersey rule simply prohibits gross negligence or a pattern of negligence. New Jersey's version of RPC 1.1 does not coincide with competence, as that word is used in RPC 1.7 (b)(2); the model rule's four-part standard is likely what was intended.

Critical to this second curing element is that the lawyer's belief be reasonable. This is an objective issue, subject to independent review by the court.[9] Logically, the lawyer's approach on reasonableness would follow the same pattern as the lawyer's subsequent approach with respect to client disclosure and consultation; namely, to assemble facts, identify all relevant persons in interest, and evaluate the risks in terms of undivided loyalty and preservation of confidences. In view of these rigorous requirements for the curing of conflicts, the reader may conclude that curing is not worth the effort. A conservative approach is prudent, particularly where the risks associated with the conflict are high. Directly adverse conflicts are particularly risky. Increasingly, courts have created *per se* prohibitions in directly adverse situations.

Per Se Conflicts

Not all RPC 1.7 conflicts are curable. Three exceptions are listed in RPC 1.7(b). The most notable is in matters involving public entity clients who are specifically not permitted to give consent. The rule also prohibits simultaneous representation of clients having opposing claims in litigation. This *per se* rule excludes only clients in the same litigation with claims against each other. It does not cover cases involving representation of parties who are on the same side, such as co-plaintiffs or co-defendants, where any conflicts are, at least theoretically, curable. Finally, the rule excludes consent to cure in any other matters prohibited by law—obviously a reference to court rulings and advisory committee opinions in which the extreme nature of a particular conflict requires a *per se* prohibition. Not surprisingly, most of the *per se* rulings involve directly adverse conflicts, where the risk of harm is greatest. A commonly cited example is *Baldasarre v. Butler*,[10] where the New Jersey Supreme Court ruled that even with consents from the parties, one attorney may not represent both the buyer and the seller in a complex commercial real estate transaction.[11]

A nearly *per se* rule exists in the matter of representing co-defendants in criminal proceedings. In that context, joint representation is presumed to be prejudicial, resulting in ineffective assistance of counsel under the Sixth Amendment.[12] However, valid joint representation may exist with informed waivers in cases where there is no actual conflict, provided the waivers are put on the record and explored by questioning each defendant.[13] Thereafter, pursuant to Rule 3:8-2, the court determines whether the joint representation will be permitted.[14] Where, however, actual adverse conflicts exist, the conflict is not waivable."[15]

Public Entity Conflicts

Representation of public entity clients is governed by both the general conflict of interest rules such as RPC 1.7 and by RPC 1.8(k), a special rule added in 2004 as a replacement for RPC 1.7(c) in public entity situations. Unlike the Model Rules, the New Jersey rules expressly prohibit public entities from giving consent to cure conflicts.[16] Because of this limitation, in order to proceed with public entity representation the New Jersey lawyer must be very confident that no conflict exists.

The threshold issue in public entity representation is identifying the public "client." The general conflict rules (1.7, 1.8 and 1.9) refer simply to a "public entity." However, RPC 1.11, the former government employee rule, refers repeatedly to "the appropriate govern-

ment agency," and RPC 1.13, the organizational client rule, defines organization in 1.13(f) to include "state or local government or political subdivision thereof." These provisions suggest that a public "client" is the specific department or agency for which the lawyer is providing representation.

That notion is inconsistent, however, at least at the county and local levels, with the "official family doctrine" which, historically, lumped all county or municipal agencies into a single county or municipal government client for conflicts purposes. (At the municipal level the principle was usually referred to as the "municipal family doctrine"). This doctrine had a long history in New Jersey, extending back to *ACPE Opinion 4* (1963).[17]

In 2006 the New Jersey Supreme Court overturned prior case law and eliminated the official family doctrine as traditionally expressed. In *ACPE Opinion 697* the committee had been asked whether an attorney whose partner represented a township zoning board or housing authority might simultaneously appear on behalf of private clients in that township's municipal court.[18] The committee ruled against the inquirer, relying upon the municipal family doctrine and insisting that such private representation would create a directly adverse conflict under RPC 1.7(a).

The Supreme Court chose to review *ACPE Opinion 697*, combining in its review consideration of another situation which the committee had condemned based upon *ACPE Opinion 697*. In that second matter the inquiring firm had asked whether it would be precluded *per se* from serving as bond counsel or as special litigation counsel for a municipal governing body while simultaneously representing private clients before boards, agencies or the municipal court in that municipality. The Supreme Court reversed the committee. In doing so, the Court provided much needed clarification of the law on several points:

1. The Court acknowledged that the official family doctrine (designated the municipal family doctrine in the Court's opinion since that was the factual context) was rooted in the appearance of impropriety standard and, as traditionally formulated, the doctrine had been effectively nullified when the appearance standard was eliminated in 2004.
2. Although the doctrine as traditionally formulated had been nullified, the Court chose to retain the title but give it a new meaning, one which fit into the "contours" of RPC 1.8(k). The new "municipal family doctrine" is in reality simply a *per se* rule created by case law opinion to the effect that if the lawyer represents a municipal governing body in a "plenary" role the lawyer is prohibited from concurrently representing private clients before any subsidiary boards or agencies of that municipality including courts.
3. This new *per se* prohibition only applies where the lawyer represents the governing body itself in a "plenary" role. It does not apply if representation of the governing body is pursuant to a "limited scope engagement" (such as serving as bond counsel or special litigation counsel, for example). Nor does the *per se* prohibition apply if the representation only involves subsidiary boards, agencies or courts. Situations not covered by the per se rule are governed by RPC 1.7(a) and RPC 1.8(k).
4. The Court emphasized the overriding importance of RPC 1.8(k) in non *per se* situations. The Court did not explain what role, if any, RPC 1.7(a) should play in the conflict analysis. The Court did, however, declare that if a lawyer represents an agency subordinate to the governing body, the lawyer is barred from representing private clients before that agency.[19]

To summarize, in public entity-private client situations, the Supreme Court's revised official family doctrine, working in combination with RPC 1.8(k) and 1.7(a), provides that if the lawyer's public entity role is plenary, representation of a private client anywhere in that public entity system is prohibited *per se*. If the lawyer's public entity role involves a subordinate entity, representation of a private client before the same subordinate entity is also prohibited *per se*. All other public entity-private client situations as well as all public-public situations, except for specific *per se* rulings such as in *ACPE Opinion 722* (2011), are subject to the lawyer's own assessment of risk per RPC 1.8(k) and 1.7(a)(2). Note that these two rules speak generally of conflicts involving "another client." Although that other client was a private one in the *Opinion 697* analysis, "another client" may also include another public entity, as in *ACPE Opinion 706* (2006), *Opinion 707* (2006) and *Opinion 722*. Note also that recusal is available as a temporary solution in appropriate situations.[20]

ACPE Opinion 707 stands for the proposition that the committee's prior opinions based upon the appearance of impropriety standard are no longer binding on attorneys. This represents an enormous shift in the law with respect to public entity clients. Instead of having recourse to a vast collection of rulings addressed to dozens of different public entity client situations, New Jersey lawyers now have for their guidance only the RPCs (primarily 1.7(a) and 1.8(k)) and the precious few opinions that have been rendered by the Supreme Court and the committee since the abo-

lition of the appearance standard in 2004. Until we have more case-made law to work with, lawyers should take a conservative approach, consistent with a recognition that representation of a public entity is a position of public trust, requiring the lawyer to be especially circumspect.[21]

Endnotes

1. *See, e.g., Hill v. N.J. Dept. of Corrections*, 342 N.J. Super. 273 (App. Div. 2001), *certif denied*, 171 N.J. 338 (2002).
2. Hazard and Hodes, *The Law of Lawyering*, Third Edition (Aspen Law and Business, 2002), Sec. 10.4; Restatement of the Law, the Law Governing Lawyers, Third (ALI 2000), Sec. 121, Comment c(iii).
3. The 2004 version of RPC 1.7(a) reads: "Except as provided in paragraph (b), 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, or a third person or by a personal interest of the lawyer."
4. *See, e.g., Gray v. Commercial Union Ins. Co.*, 191 N.J. Super. 590 (App. Div. 1983); ABA Model Rules of Professional Conduct 1.7, Comment (6).
5. Advisory Committee on Professional Ethics Opinion 556 (1985).
6. Rotunda and Dzienkowski, *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility* (ABA Center for Professional Responsibility, 2005), Sec. 1.7-2(d).
7. Under RPC 1.7(b):

   > Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved; the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; the representation is not prohibited by law; and the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

8. *A. v. B.*, 158 N.J. 51 (1999).
9. *Whitman v. Estate of Whitman*, 259 N.J. Super. 256, 263 (App. Div. 1992).
10. 132 N.J. 278 (1993).
11. *Id. See also In re Opinion 682 of the Advisory Committee on Professional Ethics*, 147 N.J. 360 (1997).
12. *State v. Bellucci*, 81 N.J. 531 (1980); *State v. Land*, 73 N.J. 24 (1977).
13. *Id.*
14. *See also* Restatement of the Law, the Law Governing Lawyers, Third (ALI 2000), sec. 129, Comment c.
15. *State ex rel. S.G.*, 175 N.J. 132 (2003).
16. RPC 1.7(b)(1). *See also* RPC 1.8(1) and 1.9(d).
17. *See, for example, Perillo v. ACPE*, 83 N.J. 366, 378-379 (1980); *In re Opinion 452*, 87 N.J. 45, 48 (1981); *ACPE Opinions 104* (1967) and *423* (1979); and *Matter of ACPE Opinion 621*, 128 N.J. 577-594 (1992).
18. *In re ACPE Opinion 697*, 188 N.J.549 (2006).
19. *Supra* at 569.
20. *ACPE Opinion 706* (2006).
21. *In re Opinion 415*, 81 N.J. 318, 324 (1979).

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DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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April 4, 2013

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
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Re: In the Matter of Jeffrey Scott Beckerman
Docket No. DRB 13-017
District Docket No. XIV-2012-0154E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board may deem appropriate), filed by the Office of Attorney Ethics (OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a censure is the appropriate discipline for respondent's violation of RPC 1.5(e) (improper division of fees between lawyers who are not in the same law firm).

Specifically, during a randomly selected audit for the period from January 1, 2006 to November 21, 2011, the OAE discovered that respondent had referred 111 cases, predominately workers' compensation claims, to another attorney, David Bolson. Respondent and Bolson were co-tenants in the same building, but were not in the same law firm. Bolson was not a certified workers' compensation or civil trial law attorney.

For those referrals, Bolson paid respondent one-third of his total legal fees, which amounted to $104,152.37. Bolson performed all of the legal services in the matters. The fees that were awarded in the cases were reasonable and set by statute. However, none of the fees paid to respondent were quantum meruit fees.

In determining the proper quantum of discipline to impose, the Board considered that Bolson received a censure for paying other attorneys who referred cases to him in 131 instances. In re Bolson, ____ N.J. ____ (2013). The Board further considered that no clients of respondent were harmed and that he acknowledged his wrongdoing by entering into a stipulation of facts.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated December 18, 2012.

2. Stipulation of discipline by consent, dated December 19, 2012.

3. Affidavit of consent, undated, but notarized on December 10, 2012.

4. Ethics history, dated April 4, 2013.

Very truly yours,

Julianne K. Decore

Julianne K. Decore
Chief Counsel

Encls.

c: Bonnie C. Frost, Chair, Disciplinary Review Board
Charles Centinaro, Director, Office of Attorney Ethics
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Office of Attorney Ethics
Jeffrey Scott Beckerman

JOHANN MEJIA ARBOLEDA, Petitioner-Respondent,

v.

PAYCHEX, Respondent-Appellant, and

PROP N SPOON, Respondent-Respondent.

Docket No. A-0085-25.

Superior Court of New Jersey, Appellate Division.

Argued February 5, 2026.
Decided February 25, 2026.

On appeal from an interlocutory order of the Division of Workers' Compensation, Department of Labor and Workforce Development, Claim Petition Nos. 2024-24034 and 2025-8339.

Bei Yang and Michael S. Urcuyo argued the cause for appellant (Goldberg Segalla LLP, attorneys; Bei Yang and Ioannis S. Athanasopoulos, of counsel and on the briefs).

Andrew J. Clark argued the cause for respondent Prop N Spoon (Rubenstein, Berliner & Shinrod, LLC, attorneys; Andrew J. Clark and Richard B. Rubenstein, on the brief).

Before Judges Mawla and Bishop-Thompson.

PER CURIAM.

We granted appellant Paychex leave to appeal from a May 1, 2025 order entered by a judge of compensation disqualifying the law firm of Goldberg Segalla LLP from representing Paychex, and a July 7, 2025 order denying a motion for reconsideration. Having considered the facts and the applicable law, we affirm.

Respondent Prop N Spoon entered a professional employer organization (PEO) agreement with Paychex for Paychex to administer Prop N Spoon's human resources functions, including providing workers' compensation coverage to its employees. On October 8, 2024, respondent Johann Mejia Arboleda filed a claim petition alleging a work-related injury, naming American Zurich Insurance Company as the insurance carrier. Prop N Spoon tendered Arboleda's workers' compensation claim to Paychex. American Zurich, on behalf of Paychex, assigned Goldberg Segalla as defense counsel.

On October 31, 2024, Goldberg Segalla filed a verified answer on behalf of Prop N Spoon, which listed the firm as Prop N Spoon's counsel. The answer did not reserve any rights with respect to the representation of Prop N Spoon, and it disputed Arboleda's claims regarding the nature, extent, and causation of permanent disability. Goldberg Segalla's answer requested Arboleda's treatment records and reserved all defenses against him, the right of cross-examination, as well as the right to call witnesses and expert witnesses.

On November 4, 2024, Goldberg Segalla filed an amended answer indicating it was entering a special appearance on behalf of Paychex as insured by Zurich and ESIS, a third-party administrator. The amended answer stated Goldberg Segalla did not represent Prop N Spoon and denied coverage of the claim; a position clearly adverse to Prop N Spoon's interests.

On November 14, 2024, Goldberg Segalla moved to dismiss Arboleda's claim for coverage from Paychex. It asserted a coverage defense against Prop N Spoon as a reason to deny the motion because it claimed Prop N Spoon concealed Arboleda's employment from Paychex, which worked to waive workers' compensation coverage for Arboleda.

As a result, Prop N Spoon retained new counsel who filed an answer to Arboleda's claim. Prop N Spoon also filed a motion for adjudication of insurance coverage and disqualification of Goldberg Segalla pursuant to RPC[1] 1.9(a) based on its initial representation of Prop N Spoon and the adverse positions it later took against Prop N Spoon on behalf of Paychex. Goldberg Segalla opposed the motion and submitted a certification from the attorney who filed the initial answer on behalf of Prop N Spoon.

The attorney certified the initial answer contained a reservation of rights to be amended. She blamed the designation of Prop N Spoon as the client in the initial answer on a technological issue. The attorney stated: "One technological issue is that when we file the [a]nswer on the [c]ourt[']s [o]n-line system, there is no option to change or delete [r]espondent, i.e., Prop N[] Spoon, in this claim." She claimed the "[p]reliminary [a]nswer was to provide notice to the court and the parties of our firm's involvement while Paychex/Zurich/ESIS completes their investigation. This filing neither establish[ed] nor intended to establish an attorney-client relationship with Prop N[] Spoon."

The attorney certified the firm engaged in subsequent communications with "Paychex/Zurich/ESIS[] to investigate and confirm the relevant facts regarding the employment relationship, the coverage issue, and the accident." Four days later, the firm amended the answer to note it does not represent Prop N Spoon and deny the claim, and entered a special appearance on behalf of Paychex, the party insured by Zurich. The attorney asserted "[t]his swift clarification demonstrated . . . the initial filing was a standard part of the investigative process, not a substantive representation of Prop N[] Spoon at any time."

The firm did not provide Prop N Spoon with legal advice, "exchange confidential information, or take any action that could be construed as forming an attorney-client relationship." The attorney claimed the firm's practices "fully align[ed] with standard practices in PEO-related litigation and compl[ied] with ethical obligations while reflecting the practical realities of such litigation." She noted "no substantive proceedings or actions took place" during the four-day interval between the filing of the initial and amended answer.

The judge of compensation considered the parties' submissions, and on May 1, 2025, disqualified Goldberg Segalla based on a conflict of interest and directed Zurich and Paychex to engage separate counsel. Goldberg Segalla moved for reconsideration, reiterating many of the arguments it initially asserted in opposition to Prop N Spoon's disqualification motion. The motion was supported by a certification from the same attorney who submitted the certification in the initial motion. She claimed the judge ruled on the disqualification issue without oral argument and over counsel's "objection and request to place arguments on the record." The attorney's certification argued no attorney-client relationship had formed between Goldberg Segalla and Prop N Spoon because "[t]here must be an offer or request for legal services by the client and acceptance by the attorney," and "[a]n attorney's representation of a party requires the party's informed consent."

The judge conducted oral argument on the motion for reconsideration. At the outset, he rejected Goldberg Segalla's argument there was a procedural impropriety in how the initial motion to disqualify was adjudicated. He pointed out he had the authority to decide the matter on the papers submitted under N.J.A.C. 12:235-3.5(c) and noted he had conferenced the matter before deciding the disqualification motion. The judge rejected the firm's argument the online system was the reason why it could not file an answer on behalf of the proper party, noting it "could have filed [the answer] manually and done it the proper way the first time." Following oral argument, the judge entered the July 7, 2025 order denying reconsideration.

I.

On appeal, Goldberg Segalla argues the judge erred because his decision is unsupported by factual and legal findings and he should have held a hearing before disqualifying the firm. Goldberg Segalla reiterates it did not form an attorney-client relationship with Prop N Spoon, and Prop N Spoon never had any contact with the firm, let alone sought advice from it. It claims there is no legal precedent to support the notion the filing of an answer on behalf of Prop N Spoon would create an attorney-client relationship, "particularly where the association was generated automatically by the court's electronic filing system."

Goldberg Segalla reiterates no party relied on the initial answer it filed on behalf of Prop N Spoon and no proceedings took place in the four-day interregnum before the amended answer was filed. It claims we must not endorse a per se rule that the filing of an answer forms an attorney-client relationship because "[w]here attorneys are frequently retained to represent employers and insurance carriers in workers' compensation claims and utilize the partially pre-filled answer form provided by the electronic filing system, minor clerical issues such as this often arise."

Goldberg Segalla notes the May 1, 2025 order directed it to substitute out of the case but also stated "Zurich and Paychex shall engage separate counsel." It argues this aspect of the court's ruling is ambiguous and to the extent it requires Zurich and Paychex to each have separate counsel, the order should be reversed.

"[A] determination of whether counsel should be disqualified is, as an issue of law, subject to de novo plenary appellate review." City of Atl. City v. Trupos, 201 N.J. 447, 463 (2010) (citing J.G. Ries & Sons, Inc. v. Spectraserv, Inc., 384 N.J. Super. 216, 222 (App. Div. 2006)). A trial court's decision to deny a motion for reconsideration will be upheld on appeal unless its decision was an abuse of discretion. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016). An abuse of discretion "arises when a decision is `made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

N.J.A.C. 12:235-3.5(c) requires motions to dismiss for lack of prosecution and motions to suppress defenses in workers' compensation matters be listed for a hearing. However, "[a]ll other motions shall be disposed of on the papers, unless a [j]udge of [c]ompensation directs oral argument or further proceedings."

RPC 1.9(a) states: "A lawyer who has represented a client in a matter shall not thereafter represent another client in the same . . . matter in which that client's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing." Inasmuch as the Rules of Professional Conduct are a part of the Rules of Court, our Supreme Court has stated:

> [T]he meaning or scope of a court rule [is reviewed] de novo, applying "ordinary principles of statutory construction to interpret the court rules." State v. Robinson, 229 N.J. 44, 67 (2017). We begin with the plain language of the rule, and "ascribe to the [words of the rule] their ordinary meaning and significance . . . and read them in context with related provisions so as to give sense to the [court rules] as a whole." Wiese v. Dedhia, 188 N.J. 587, 592 (2006) (alterations in original) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)).
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> [DiFiore v. Pezic, 254 N.J. 212, 228 (2023).]

Having considered the record and the applicable law, we affirm substantially for the reasons expressed by the judge during the July 7, 2025 hearing. We add the following comments.

The judge did not have to conduct a hearing because N.J.A.C. 12:235-3.5(c) expressly authorizes him to adjudicate the disqualification motion on the papers. More importantly, based on a plain reading of RPC 1.9(a), it was self-evident why the judge disqualified Goldberg Segalla on May 1, 2025. The firm clearly represented Prop N Spoon, even if it was for just four days, when it undertook its defense by filing an answer. No factfinding or statement of reasons was required to point out the obvious. The correctness of the judge's ruling was only underscored when the firm later switched sides and took a position adverse to Prop N Spoon.

The arguments that the side-switching was a mishap created by the electronic court filing system or the filing of an answer on behalf of an incorrect party is normal practice when initial pleadings are filed in workers' compensation matters, lack merit. The firm does not dispute the manual filing of an answer on behalf of Paychex would have obviated the conflict. Moreover, the record lacks evidence that it is normal for workers' compensation matters to be initiated in the name of one party only to be later corrected by representing an entirely separate and adverse party. Even if this were so, we would not condone it given the clear and plain wording of RPC 1.9(a). In other words, we decline to engraft a "no harm-no foul" standard onto the Rules of Professional Conduct, particularly where, as here, a duty to a client is implicated.

We do not read the May 1, 2025 order to require Zurich and Paychex to each retain their own separate counsel. Zurich insures Paychex. There is nothing in the record to indicate they are adverse to one another requiring separate counsel. The judge clearly meant Zurich and Paychex needed to retain counsel other than Goldberg Segalla. Prop N Spoon agrees.

In sum, the judge neither misapplied the law nor abused his discretion. The remaining arguments raised on appeal lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

[1] Rules of Professional Conduct.