

CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0100 - CLIENT-LAWYER RELATIONSHIP

27 NCAC 02 RULE 1.09 DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b)

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information ~~has become generally known is contained in the public record, was disclosed at a public hearing, or was otherwise publicly disseminated~~; or
- (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client. ~~A lawyer may disclose information otherwise covered by Rule 1.6 that is contained in the public record, was disclosed at a public hearing, or was otherwise publicly disseminated unless the information would likely be embarrassing or detrimental to the client if disclosed.~~

Comment

[1]

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Lawyers Moving Between Firms

[4]

...

[8] Paragraph (e) provides that information acquired by the lawyer in the course of representing a client ~~may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. Whether information is "generally known" depends in part upon how the information was obtained and in part upon the former client's reasonable expectations. The mere fact that information is accessible through the public record or has become known to some other persons, does not necessarily deprive the information of its confidential nature. If the information is known or readily available to a relevant sector of the public, such as the parties involved in the matter, then the information is probably considered "generally known."~~ See Restatement (Third) of The Law of Governing Lawyers, 111 cmt. d. The Rules of Professional Conduct are rules of reason and should be applied with a commonsense approach. Rule 0.2, Scope, cmt. [1]. To reveal is to make public something that was

secret or hidden. See Reveal, Merriam-Webster's Collegiate Dictionary (10th ed. 1998). A lawyer cannot reveal that which has already been revealed via public disclosure. Accordingly, the prohibition on a lawyer revealing information pursuant to Rule 1.9(c)(2) does not extend to information that has been made public because public information by its nature is no longer capable of being revealed.

[9] Whether information is likely to be embarrassing or detrimental to a client if disclosed must be determined by the lawyer prior to the disclosure under Rule 1.9(c)(2). A lawyer should elevate a client's desire for his or her lawyer to not publicly discuss his or her case over the lawyer's desire to publicly speak about the case after the representation has ended. When it is unclear whether a lawyer's disclosure pursuant to Rule 1.9(c)(2) would be embarrassing or detrimental to the client, a lawyer should consult with the client about the potential disclosure and the resulting impact thereof.

[910] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(f). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

History Note: Authority G.S. 84-23;

Approved by the Supreme Court. July 24, 1997;

Amendments Approved by the Supreme Court: October 7, 1999; February 27, 2003.