

	<p style="text-align: center;"><b>American Bar Association CPR Policy Implementation Committee</b></p> <p style="text-align: center;"><b>Variations of the ABA Model Rules of Professional Conduct Rule 1.7 Comment [34]</b></p> <p>[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.</p> <p>Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see <a href="http://www.abanet.org/cpr/jclr/home.html">http://www.abanet.org/cpr/jclr/home.html</a>.</p> <p>Of the states that have revised their Rules of Professional Conduct since 2002:</p> <ul style="list-style-type: none"> <li>• <b>Thirty (30) States have adopted MR Comment [34]:</b> AZ, AR, CA, CT, DE, ID, IL, IN, IA, KS, KY, ME, MD, MA, MN, MO, NE, NH, NC, OK, PA, RI, SC, SD, TN, UT, VT, WA, WI, WY</li> <li>• Two (2) states and the District of Columbia have adopted modified MR Comment: AK, D.C., NY</li> <li>• Thirteen (13) states have not adopted MR Comment: AL, CA, FL, LA, MS, MT, NV, NJ, NM, ND, OH, OR, VA</li> </ul> <p>One (1) State has proposed to adopt MR Comment: MI</p>
<p><a href="#">AL</a> Effective 2/19/09</p>	<p>Does not adopt</p>
<p><a href="#">AK</a> Effective 4/15/09</p>	<p>Changed to Comment [33]; Adds, after “See Rule 1.13(a),” “and 1.13(f) (the definition of constituent)”</p>
<p><a href="#">AZ</a> Effective 12/1/03</p>	<p>Same as MR Comment [33]</p>
<p><a href="#">AR</a> Effective 5/1/05</p>	<p>Same as MR</p>
<p><a href="#">CA</a></p>	<p>Does not adopt</p>

Effective 9/1/09	
<a href="#">CO</a> Effective 1/1/08	Same as MR
<a href="#">CT</a> Effective 1/1/07	Same as MR
<a href="#">DE</a> Effective 7/1/03	Same as MR
<a href="#">District of Columbia</a> Effective 2/1/07	<p>[21] As is provided in Rule 1.13, the lawyer who represents a corporation, partnership, trade association or other organization-type client is deemed to represent that specific entity, and not its shareholders, owners, partners, members or “other constituents.” Thus, for purposes of interpreting this rule, the specific entity represented by the lawyer is the “client.” Ordinarily that client’s affiliates (parents and subsidiaries), other stockholders and owners, partners, members, etc., are not considered to be clients of the lawyer. Generally, the lawyer for a corporation is not prohibited by legal ethics principles from representing the corporation in a matter in which the corporation’s stockholders or other constituents are adverse to the corporation. <i>See</i> D.C. Bar Legal Ethics Committee Opinion No. 216. A fortiori, and consistent with the principle reflected in Rule 1.13, the lawyer for an organization normally should not be precluded from representing an unrelated client whose interests are adverse to the interests of an affiliate (<i>e.g.</i>, parent or subsidiary), stockholders and owners, partners, members, etc., of that organization in a matter that is separate from and not substantially related to the matter on which the lawyer represents the organization.</p> <p>[22] However, there may be cases in which a lawyer is deemed to represent a constituent of an organization client. Such de facto representation has been found where a lawyer has received confidences from a constituent during the course of representing an organization client in circumstances in which the constituent reasonably believed that the lawyer was acting as the constituent’s lawyer as well as the lawyer for the organization client. <i>See generally</i> ABA Formal Opinion 92-365. In general, representation may be implied where on the facts there is a reasonable belief by the constituent that there is individual as well as collective representation. <i>Id.</i> The propriety of representation adverse to an affiliate or constituent of the organization client, therefore, must first be tested by determining whether a constituent is in fact a client of the lawyer. If it is, representation adverse to the constituent requires compliance with Rule 1.7. <i>See</i> ABA Opinion 92-365. The propriety of representation must also be tested by reference to the lawyer’s obligation under Rule 1.6 to preserve confidences and secrets and to the obligations imposed by paragraphs (b)(2) through (b)(4) of this rule. Thus, absent informed consent under Rule 1.7(c), such adverse representation ordinarily would be improper if:</p> <p style="padding-left: 40px;">(a) the adverse matter is the same as, or substantially related to, the matter on which the lawyer represents the organization client,</p>

	<p>(b) during the course of representation of the organization client the lawyer has in fact acquired confidences or secrets (as defined in Rule 1.6(b)) of the organization client or an affiliate or constituent that could be used to the disadvantage of any of the organization client or its affiliate or constituents, or</p> <p>(c) such representation seeks a result that is likely to have a material adverse effect on the financial condition of the organization client.</p> <p>[23] In addition, the propriety of representation adverse to an affiliate or constituent of the organization client must be tested by attempting to determine whether the adverse party is in substance the “alter ego” of the organization client. The alter ego case is one in which there is likely to be a reasonable expectation by the constituents or affiliates of an organization that each has an individual as well as a collective client-lawyer relationship with the lawyer, a likelihood that a result adverse to the constituent would also be adverse to the existing organization client, and a risk that both the new and the old representation would be so adversely affected that the conflict would not be “consentable.” Although the alter ego criterion necessarily involves some imprecision, it may be usefully applied in a parent-subsiary context, for example, by analyzing the following relevant factors: whether (i) the parent directly or indirectly owns all or substantially all of the voting stock of the subsidiary, (ii) the two companies have common directors, officers, office premises, or business activities, or (iii) a single legal department retains, supervises and pays outside lawyers for both the parent and the subsidiary. If all or most of those factors are present, for conflict of interest purposes those two entities normally would be considered alter egos of one another and the lawyer for one of them should refrain from engaging in representation adverse to the other, even on a matter where clauses (a), (b) and (c) of the preceding paragraph [22] are not applicable. Similarly, if the organization client is a corporation that is wholly owned by a single individual, in most cases for purposes of applying this rule, that client should be deemed to be the alter ego of its sole stockholder. Therefore, the corporation’s lawyer should refrain from engaging in representation adverse to the sole stockholder, even on a matter where clauses (a), (b) and (c) of the preceding paragraph [22] are not applicable.</p> <p>[24] If representation otherwise appropriate under the preceding paragraphs seeks a result that is likely ultimately to have a material adverse effect on the financial condition of the organization client, such representation is prohibited by Rule 1.7(b)(3). If the likely adverse effect on the financial condition of the organization client is not material, such representation is not prohibited by Rule 1.7(b)(3). Obviously, however, a lawyer should exercise restraint and sensitivity in determining whether to undertake such representation in a case of that type, particularly if the organization client does not realistically have the option to discharge the lawyer as counsel to the organization client.</p> <p>[25] The provisions of paragraphs [20] through [23] are subject to any contrary agreement or other understanding between the client and the lawyer. In particular, the client has the right by means of the original engagement letter or otherwise to restrict the lawyer from engaging in representations otherwise permissible under the foregoing guidelines. If the lawyer agrees to such restrictions in order to obtain</p>
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As of October 21, 2010

	<p>or keep the client's business, any such agreement between client and lawyer will take precedence over these guidelines. Conversely, an organization client, in order to obtain the lawyer's services, may in the original engagement letter or otherwise give informed consent to the lawyer in advance to engage in representations adverse to an affiliate, owner or other constituent of the client not otherwise permissible under the foregoing guidelines so long as the requirements of Rule 1.7(c) can be met.</p> <p>[26] In any event, in all cases referred to above, the lawyer must carefully consider whether Rule 1.7(b)(2) or Rule 1.7(b)(4) requires informed consent from the second client whom the lawyer proposes to represent adverse to an affiliate, owner or other constituent of the first client.</p>
<a href="#">FL</a> Effective 5/22/06	Did not adopt
<a href="#">ID</a> Effective 7/1/04	Same as MR
<a href="#">IL</a> Effective 1/1/2010	Same as MR
<a href="#">IN</a> Effective 1/1/05	Same as MR
<a href="#">IA</a> Effective 7/1/05	Same as MR
<a href="#">KS</a> Effective 7/1/07	Same as MR
<a href="#">KY</a> Effective 7/15/09	Same as MR
<a href="#">LA</a> Effective 3/1/04	Did not adopt Comments
<a href="#">ME</a> Effective 8/1/09	Same as MR
<a href="#">MD</a> Effective 7/1/05	Same as MR
<a href="#">MI</a> (as proposed July 2004)	Same as MR
<a href="#">MN</a> Effective	Same as MR

As of October 21, 2010

10/1/05	
<a href="#">MS</a> Effective 11/3/05	Did not adopt
<a href="#">MO</a> Effective 7/1/07	Same as MR
<a href="#">MT</a> Effective 4/1/04	Did not adopt Comments
<a href="#">NE</a> Effective 9/1/05	Same as MR
<a href="#">NV</a> Effective 5/1/06	Did not adopt Comments
<a href="#">NH</a> Effective 1/1/08	Same as MR
<a href="#">NJ</a> Effective 1/1/04	Did not adopt Comments
<a href="#">NM</a> Effective 11/2/09	Does not adopt
<a href="#">NY</a> Effective 4/1/09	<p>[34] A lawyer who represents a corporation or other organization does not, simply by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Although a desire to preserve good relationships with clients may strongly suggest that the lawyer should always seek informed consent of the client organization before undertaking any representation that is adverse to its affiliates, Rule 1.7 does not require the lawyer to obtain such consent unless (a) the lawyer has an understanding with the organizational client that the lawyer will avoid representation adverse to the client's affiliates, (b) the lawyer's obligations to either the organizational client or the new client are likely to adversely affect the lawyer's exercise of independent professional judgment on behalf of the other client, or (c) the circumstances are such that the affiliate should also be considered a client of the lawyer. Whether the affiliate should be considered a client will depend on the nature of the lawyer's relationship with the affiliate or on the nature of the relationship between the client and its affiliate. For example, the lawyer's work for the client organization may be intended to benefit its affiliates. The overlap or identity of the officers and boards of directors, and the client's overall mode of doing business, may be so extensive that the entities would be viewed as "alter egos." Under such circumstances, the lawyer may conclude that the affiliate is the lawyer's client despite the lack of any formal agreement to represent the affiliate.</p> <p>[34A] Whether the affiliate should also be considered a client of the lawyer may</p>

As of October 21, 2010

	<p>also depend on whether the affiliate has imparted confidential information to the lawyer in furtherance of the representation, whether the affiliate entities share a legal department and general counsel, and other factors. On the other hand, where the entities are related only through stock ownership, the ownership is less than a controlling interest, and the lawyer has had no significant dealings with the affiliate or access to its confidences, the lawyer may reasonably conclude that the affiliate is not the lawyer's client.</p> <p>[34B] Finally, before accepting a representation adverse to an affiliate of a corporate client, a lawyer should consider whether the extent of the possible adverse economic impact of the representation on the entire corporate family might be of such a magnitude that it would materially limit the lawyer's ability to represent the client opposing the affiliate with loyalty and zeal. In those circumstances, Rule 1.7 will ordinarily require the lawyer to decline representation adverse to a member of the same corporate family, absent, the informed consent of the client opposing the affiliate of the lawyer's corporate client.</p>
<a href="#">NC</a> Effective 3/1/03	Same as MR
<a href="#">ND</a> Effective 8/1/06	Did not adopt
<a href="#">OH</a> Effective 2/1/07	Did not adopt
<a href="#">OK</a> Effective 1/1/08	Same as MR
<a href="#">OR</a> Effective 12/1/06	Did not adopt Comments
<a href="#">PA</a> Effective 7/1/06	Same as MR
<a href="#">RI</a> Effective 4/15/07	Same as MR
<a href="#">SC</a> Effective 10/1/05	Same as MR
<a href="#">SD</a> Effective 1/1/04	Same as MR
<a href="#">TN</a> Effective 1/1/2011	TN Comment [34] is the same as MR
<a href="#">UT</a>	Same as MR

As of October 21, 2010

Effective 11/1/05	
<a href="#">VT</a> Effective 9/1/09	Same as MR
<a href="#">VA</a> Effective 1/1/04	Did not adopt
<a href="#">WA</a> Effective 9/1/06	Same as MR
<a href="#">WI</a> Effective 7/1/07	Same as MR
<a href="#">WY</a> Effective 7/1/06	Same as MR

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