# The Obligations of Government Lawyers Under New York's New Rules of Professional Conduct

By Steven B. Rosenfeld

On April 1, 2009, more than a quarter-century after the American Bar Association first adopted the Model Rules of Professional Conduct as a modern set of ethical standards to regulate the legal profession, New York finally abandoned the old Code of Professional Responsibility and became the 48th state to adopt a version of the ABA Model Rules. [1] In so doing, New York has left behind the Code's confusing mixture of aspirational ethical standards and obligatory disciplinary rules (DR) grouped with reference to abstract professional ideals, in favor of the clearer commands of the Model Rules, which are organized based on the roles lawyers play and tasks they perform.[2] Not only does this change facilitate identifying and understanding rules governing a particular topic, but it also allows New York lawyers to benefit from the nationwide body of law and commentary interpreting the Model Rules that have developed over many years.[3] Although the new Rules of Professional Conduct do not, for the most part, radically change the substance of the pre-existing ethical code, adoption of the new format provides a suitable occasion for government lawyers to brush up on the ethical strictures applicable to them, and to become aware of those few rules that are in fact new.

This article will focus on the new Rule 1.11, "Special Conflicts of Interest for Former and Current Government Officers and Employees." However, government lawyers should not lose sight of the fact that they, like all lawyers, are subject to the entirety of the new Rules, whether or not they are specifically applicable to lawyers currently or formerly in public service. Thus—and only by way of example—government lawyers should know that they are not exempt from the new Rules that now expressly require any lawyer representing a client before a court or other tribunal to correct false statements of material fact or law previously made to the tribunal, either by the lawyer, the lawyer's client, or a witness called by the lawyer, and to "take reasonable remedial measures" to prevent or cure criminal or fraudulent conduct related to the proceeding, even if such action would require disclosure of a confidential attorney-client communication;[4] that prohibit lawyers from using "means that have no substantial purpose other than to delay or prolong" a proceeding, or to cause needless expense;[5] and that require government lawyers to "adequately supervise" the work of nonlawyers in their offices over whom they have supervisory authority.[6] Moreover, many of the Rules are applicable to lawyers serving as government officials or employees, whether or not their official duties involve legal representation of or advice to a government agency.[7] Thus, for example, lawyers in government, regardless of their official positions, are subject to Rule 8.4's prescriptions against conduct "that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer," that involves "dishonesty, fraud, deceit or misrepresentation," or that "is prejudicial to the administration of justice."[8]

## I. New Definitions

The chair of the New York State Bar Association standards committee that drafted the new Rules has been quoted as saying that "the most important rule is Rule 1.0," containing the definitions used throughout the Rules, and that if New York lawyers "read nothing else, they should read that and familiarize themselves with the terms that are defined."[9] That advice should be heeded by government lawyers, since several of the definitions affect their ethical obligations in certain key respects.

First and foremost is Rule 1.0(h)'s definition of the terms "firm" and "law firm," which are used in many different contexts throughout the Rules, to include a "government law office." The term "government law office" is not separately defined, and the official commentary injects some uncertainty by stating that "[w]hether lawyers in a government agency or department constitute a firm may depend upon the issue involved or be governed by other law."[10] Nevertheless, the expansion of the definition was clearly intended to subject the legal departments of government agencies, prosecutors' offices, and the offices of state attorneys general, as well as city and county attorneys, to many of the same restrictions previously applicable only to private law firms.[11]

Second, the term "matter," used throughout the rules, is defined very broadly in Rule 1.0(l) to include "any litigation, judicial or administrative proceeding, case, claim, application, request for a ruling or other determination, contract, controversy, investigation, charge, accusation, arrest, negotiation, arbitration, mediation, or any other representation involving a specific party or parties"—in short, just about anything that a government lawyer, at least *qua* lawyer, may be asked

or required to do. That definition applies not only in the specific context of conflicts of interest, discussed below, but also, for example, to the command of Rule 1.1(b) that a lawyer may not "handle a legal *matter* that the lawyer knows or should know that the lawyer is not competent to handle."[12]

Likewise, the new definition of "tribunal" in Rule 1.0(w) expands significantly the definition of that term in the old Code. Whereas the former New York definition was limited to "courts, arbitrators and other adjudicatory bodies," the new definition expressly includes "a legislative body, administrative agency or other body acting in an adjudicative capacity."[13] Accordingly, government lawyers working as or for state and county legislators, regulatory commissions and other administrative agencies must constantly be cognizant of whether their agency is acting "in an adjudicative capacity" so as to subject them, for example, to the obligations of Rules 3.3, 3.4 and 3.5, which extensively regulate the conduct of lawyers before "a tribunal."[14]

Finally, government lawyers should focus on the definition of "confidential information" in Rule 1.0(d), which differs significantly from the definitions in *both* the old Code and the ABA Model Rules. Under the new Rules, confidential information "consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential."[15] In addition, Rule 1.11 (the rule expressly applicable to current and former government lawyers) further defines "confidential government information" as information (whether or not relating to the lawyer's government "client") obtained under governmental authority that the government, at the time the Rule is applied, is prohibited by law or legal privilege from disclosing to the public and that is not otherwise available to the public.[16]

With those preliminaries, we now examine closely the conflict-of-interest provisions of Rule 1.11 itself. Before doing so, however, it is worth noting that, in regulating "conflicts of interest" for lawyers currently or formerly serving as public servants, the Rules of Professional Conduct do not supplant, but only complement and supplement, the conflicts-of-interest laws applicable to *all* public servants (lawyers and nonlawyers alike), such as Chapter 68 of the New York City Charter, Article 18 of the New York State General Municipal Law, the state law governing conflicts of interests of officers and employees of all municipalities outside New York City, and §§ 73–74 of the New York State Public Officers Law. Some of the parallels and contrasts between the Rules and those laws are noted below.

## II. Rule 1.11's Restrictions on Current Government Lawyers

Let us look first at how Rule 1.11 affects the conduct of a lawyer currently serving as "a public officer or employee"—although those provisions are contained in the last two substantive portions of the Rule, subsections (d) and (f). Here, government lawyers[17] will be relieved to discover that the new Rule preserves, without any substantive change, the contents of the Disciplinary Rules in the Code.

Thus, Rule 1.11(d) retains, in substantially identical language, the terms of former DR 9-101(B)(3). First, under Rule 1.11(d)(1), "except as law may otherwise expressly provide," a government lawyer may not "participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter."[18] Recall, though, the expanded definition of "matter" discussed above, which includes not only litigations and other contested proceedings, but also claims, applications and contracts. This means, for example, that one of several counselors to a zoning board who previously assisted a private client with an application for a zoning variance cannot participate in deciding whether the variance should be granted: the application was clearly the same "matter" as the zoning board's determination, and there are others who are "authorized to act in the lawyer's stead in the matter." On the other hand, a newly elected district attorney who might otherwise be personally disqualified from prosecuting a defendant represented by his former law firm may participate in the prosecution if a special prosecutor is not available as a matter of law.[19]

Second, Rule 1.11(d)(2) prohibits a government lawyer from negotiating for post-government private employment with a party or lawyer involved in a matter in which the government lawyer is participating personally and substantially.[20] Thus, an assistant district attorney may not seek employment with a defendant's law firm while prosecuting the defendant, nor may an agency contract lawyer evaluating bids for a government contract negotiate for a job with one of the bidding contractors.[21]

The new Rule 1.11(f) is identical to the former DR 8-101, retaining provisions that prohibit a "lawyer who holds public office"[22] from using the public position to influence other government officials to benefit the lawyer personally or his or her clients.[23] Thus, under Rule 1.11(f)(1), a government lawyer may not "use the public position to obtain, or attempt to obtain, a special advantage in legislative matters for the lawyer or for a client under circumstances where the lawyer knows[,] or it is obvious[,] that such action is not in the public

interest."[24] Likewise, Rule 1.11(f)(2) prevents government lawyers from using their positions to "influence, or attempt to influence, a tribunal"—and recall the expanded definition of "tribunal"—"to act in favor of the lawyer or of a client."[25] Under both of those subsections, it is unclear from either the language of the Rule or the commentary whether "a client" was intended to refer to a client *previously* represented by the government lawyer while in private practice, or a client *currently* represented by the government lawyer in a private practice permissibly carried on simultaneously with holding public office (as must be the case with respect to numerous lawyers holding part-time local offices). What seems most likely is that the Rule means to refer to both. Thus, for example, a lawyer serving on a town board or as counsel to a state legislator may not engineer the enactment of a piece of legislation that will specifically benefit either a former or current client of that lawyer. Nor may a lawyer representing a government entity in a litigation seek to obtain a result that would directly benefit one of that lawyer's private clients.[26]

Finally, Rule 1.11(f)(3) retains the Code's unremarkable requirement that lawyers holding public office may not accept bribes—i.e., that they may not "accept anything of value from any person when the lawyer knows[,] or it is obvious[,] that the offer is for the purpose of influencing the lawyer's action as a public official."[27]

## III. Restrictions on Former Government Lawyers and Their Current Firms

The remaining portions of Rule 1.11 (that is, subsections (a), (b) and (c)) govern the conduct of lawyers who have departed government service for private practice, restricting their use of information obtained during their government service and regulating the types of matters such lawyers, *and their firms*, may handle. These sections are similar in substance to former Disciplinary Rules 9-101(B)(1) and (2), but contain several changes in language and nuance.

### A. Use of Confidential Information

With regard to use of information, one clear change is that Rule 1.11(a)(1) expressly requires "a lawyer who has served as a public officer or employee" to comply with Rule 1.9(c). That Rule, in turn, prevents all lawyers (i.e., whether they formerly served in government or not) who (or whose former firm) previously represented a client in a matter (recall the broad definition of "matter") from revealing, or using to the disadvantage of the former client, any confidential information—as defined above[28]—of the former client. They may, however, use such information when expressly permitted or required by the Rules (e.g., when required to prevent fraud on a tribunal)—or "when the information has become generally known."[29] As applied to former government lawyers, due to the expansion of the definition of "firm" to include "a government law office," Rule 1.9(c) would prevent use or disclosure of confidential client information learned in the course of any matter handled by the lawyer's former government office. Thus, for example, a lawyer who had previously worked in the office of the counsel to a governor, or a former assistant state attorney general whose office had represented the governor in a litigation brought against the state, would not be permitted to use confidential information learned about the governor to the governor's disadvantage or to reveal that information—unless, of course, the information about the governor had already been splashed across the front pages.

While Rule 1.11(a)(1) regulates the use or revelation of confidential *client* information obtained while in government service, Rule 1.11(c) restricts whom a former government lawyer in possession of "confidential *government* information" can represent. Recall, first, that "confidential government information" includes not only information about clients protected by obligations of client secrecy, but also any information, about anyone or anything, which has been obtained under governmental authority that the government, at the time the Rule is applied, is prohibited by law or legal privilege from disclosing to the public and that is not otherwise available to the public. Rule 1.11(c) dictates that, except as law may otherwise provide,[30] a lawyer who has obtained "confidential government information" about a person while working in government "may not represent a private client whose interests are adverse to that person [if] the information *could be used* to the material disadvantage of that person."[31] Nor may the former government lawyer's new firm accept *or continue* such a representation, *unless* the disqualified former government lawyer is "timely and effectively screened from any participation in the matter"[32] according to the screening mechanisms of Rule 1.11(b), discussed below. Thus, for example, a government lawyer who obtained confidential information about an individual in the course of a government investigation could not take on the representation of a client whose interests are adverse to the subject of the information thus obtained if there is any possibility that the information could be used to the disadvantage of the adverse party. Likewise, any firm that lawyer joined after leaving government could not take on the matter—or continue on the matter if already retained—unless the disqualified lawyer is immediately and "effectively" screened from the representation. The explication of what constitutes an "effective" screen is discussed below.

### B. Disqualification of Former Government Lawyers

Like DR 9-101(B)(1), its predecessor, Rule 1.11(a)(2), prohibits a former government lawyer from representing a client in connection with any matter[33] in which the lawyer participated "personally and substantially" while in government, subject to an important exception. In that regard, Rule 1.11(a)(2) is absolutely consistent with the "post-employment" conflicts of interest laws applicable to *all* public servants of New York City[34] and to New York State officials and employees covered by the Public Officers Law.[35] The exception in Rule 1.11(a)(2)—consistent with the power of the New York City Conflicts of Interest Board to grant waivers in appropriate cases[36]—permits a former government lawyer to take on an otherwise prohibited representation if the appropriate government agency gives its *informed consent*,[37] *confirmed in writing*, and the lawyer had not acted in a judicial capacity in connection with the matter. Thus, the former government lawyer referred to above, who as a state employee defended the governor when he was sued in his official capacity, *might* be permitted to represent an individual bringing suit against the governor in a related matter, *if* the lawyer's former government law office (i.e., the office of the counsel to the governor, or the attorney general's office) consented to the representation in writing—after the former government lawyer has communicated to the former government office "information adequate . . . to make an informed decision" and "adequately explained" to the government office "the material risks of the proposed" representation, as well as the "reasonably available alternatives."[38]

This exception based on informed government consent was not explicitly contained in Code of Professional Responsibility,[39] although the New York State Bar Association Commission on Professional Ethics had interpreted the Code to permit such representation with consent in certain cases.[40] What is new is that Rule 1.11(a)(2) expressly requires that all such conflict waivers involving former government lawyers must be "confirmed in writing."[41]

The conflict-of-interest disqualification in Rule 1.11(a), based on a lawyer's "personal and substantial" participation in a matter while in government, or the lawyer's possession of confidential client information, affects not only the former government lawyer, but also that lawyer's new firm. Rule 1.11(b) expressly provides that when a lawyer is disqualified from representing a client in a matter under Rule 1.11(a) "no lawyer in a firm with which [the disqualified lawyer] is associated may knowingly undertake *or continue* representation" in the matter unless the firm adopts effective mechanisms to screen the disqualified former government lawyer from the work of that lawyer's new colleagues.[42]

Disciplinary Rule 9-101(B) of the old Code contained a similar provision disqualifying the former government lawyer's entire firm unless the "disqualified lawyer is effectively screened" from the matter *and* "there are no other circumstances in the particular representation that create an appearance of impropriety." However, the old Code did not elaborate on what would constitute "effective" screening mechanisms. Now, Rule 1.11(b)(1) sets forth four specific actions that the firm must "promptly and reasonably" take to distance the disqualified lawyer from the matter, in order to avoid firm-wide disqualification.[43] First, the firm must notify, as appropriate, "lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation."[44] Second, the firm must implement effective screening procedures to "prevent the flow of information" regarding the matter between the disqualified lawyer and others in the firm.[45] Third, the firm must ensure that the disqualified lawyer is apportioned no part of the fee from the representation.[46] Fourth, the firm must give written notice to the appropriate government agency to enable it to ascertain compliance with these requirements.[47] Finally, even if the firm takes such steps, the additional safeguard of former DR 9-101(B)(1)(b) remains in place: there must be "no other circumstances in the particular representation that create an appearance of impropriety."[48]

It remains to be seen what specific screening mechanisms employed by law firms to avoid firm-wide disqualification will be upheld by courts and Bar Association ethics panels—and what "other circumstances" they may view as creating "an appearance of impropriety" even with such mechanisms in effect. Nevertheless, both courts and ethics panels should take note of the admonition of the NYSBA Standards Committee, which drafted the new Rules, that "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," but should be interpreted in light of the government's "legitimate need to attract qualified lawyers as well as to maintain high ethical standards."[49]

## Endnotes

1. *See* Center for Prof'l Responsibility, American Bar Ass'n, DATES OF ADOPTION OF THE MODEL RULES OF PROFESSIONAL CONDUCT, http://www.abanet.org/cpr/mrpc/chron_states.html (last visited June 19, 2009).
2. *See* Comm. on Standards of Attorney Conduct, NYSBA, PROPOSED NEW YORK RULES OF PROFESSIONAL CONDUCT iii-v (2005), http://www.nysba.org/AM/Template.cfm?Section=Committee_on_Standards_of_Attorney_Conduct_Home&Template=/CM/ContentDisplay.cfm&ContentFileID=2788.
3. *Id.*

4. N.Y. Rules of Prof'l Conduct R. 3.3(a)-(c) (2009); *see also* Press Release, New York State Unified Court System, New Attorney Rules of Professional Conduct Announced (Dec. 16, 2008), http://www.courts.state.ny.us/press/pr2008_7.shtml.

5. N.Y. Rules of Prof'l Conduct R. 3.2 (2009); *see also* Press Release, New York State Unified Court System, New Attorney Rules of Professional Conduct Announced (Dec. 16, 2008), http://www.courts.state.ny.us/press/pr2008_7.shtml.

6. N.Y. Rules of Prof'l Conduct R. 5.3 (2009). This obligation, which was contained in substance in DR 1-104(C) of the Code, is now made expressly applicable to government lawyers by virtue of the inclusion of "government law office" in the definition of "firm" or "law firm" in Rule 1.0(h).

7. For instance, all lawyers employed by the government, regardless of their particular responsibilities, must abide by Rule 5.1(b)(1) (requiring lawyers with management responsibility to ensure that other lawyers with whom they work abide by the Rules of Professional Conduct), Rule 5.5(b) (prohibiting aiding a nonlawyer in the unauthorized practice of law), and Rule 7.2 (regulating payments for referrals and recommendations). The commentary of the NYSBA Committee on Standards of Attorney Conduct on Rule 7.2 is particularly relevant to all lawyers who work in government. It explains that Rule 7.2 "prohibits a lawyer from making or soliciting a political contribution to any candidate for government office, government official, political campaign committee or political party, if a disinterested person would conclude that the contribution is being made or solicited for the purpose of obtaining or being considered eligible to obtain a government legal engagement." Comm. on Standards of Attorney Conduct, NYSBA, New York Rules of Professional Conduct 170 (2009), http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/FinalNYRPCsWithComments(April12009).pdf. Thus, all lawyers serving as government employees must consider how the political contributions they make or solicit will appear to others.

8. N.Y. Rules of Prof'l Conduct R. 8.4 (2009).

9. Joel Stashenko, *New Attorney Ethics Standards to Take Effect in New York*, N.Y. L.J., Mar. 31, 2009, http://www.law.com/jsp/article.jsp?id=1202429531699.

10. Comm. on Standards of Attorney Conduct, NYSBA, New York Rules of Professional Conduct 7 (2009), http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/FinalNYRPCsWithComments(April12009).pdf.

11. Some examples of Model Rules not otherwise considered in this article which are applicable to "firms" or "law firms," and thus now appear to be applicable to "government law offices," are Rule 5.1 (governing the supervision of subordinate lawyers in a law firm), Rule 6.3 (regulating the membership in a legal services organization of lawyers working in law firm), Rule 6.5(a)(2) (governing the participation in limited pro bono legal services programs of lawyers working in law firms), and Rule 7.2(a)(1) (regulating a law firm's referral of clients to non-legal professional service firms).

12. N.Y. Rules of Prof'l Conduct R. 1.1(b) (2009) (emphasis added).

13. *Compare* N.Y. Rules of Prof'l Conduct R. 1.0(w) (2009) *with* N.Y. Lawyer's Code of Prof'l Responsibility Definition 6 (repealed 2009).

14. Rule 1.0(w) provides some assistance in that context by providing that a body acts in an "adjudicative capacity" when "a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter." And Rule 1.11(e) expressly excludes "agency rulemaking functions" from the definition of "matter" as used *in that Rule*.

15. N.Y. Rules of Prof'l Conduct R. 1.6(a) (2009).

16. N.Y. Rules of Prof'l Conduct R. 1.11(c) (2009).

17. By its terms, Rule 1.11 applies to a lawyer currently or formerly serving as "a public officer or employee" and (in subsection (f)) to "a lawyer who holds public office," but – assuming any difference between those two terms was unintended -- this article uses the term "government lawyer" interchangeably with both.

18. N.Y. Rules of Prof'l Conduct R. 1.11(d)(1) (2009).

19. *See* Comm. on Standards of Attorney Conduct, NYSBA, Proposed New York Rules of Professional Conduct 168 (2005), http://www.nysba.org/Content/ContentFolders30/CommitteeonStandardsofAttorneyConduct2/Rule1.11.pdf (citing NYSBA Comm. on Prof'l Ethics, Op. 638 (1992)). Chapter 68 of the New York City Charter, the New York City Conflicts of Interest Law, places no such restrictions on public servants based on their *former* employment or client relationships; in contrast, N.Y. Public Officers Law § 74 (applicable to most New York State employees) has been interpreted by the N.Y. State Ethics Commission as requiring state employees to consider recusal from all matters concerning former employers or entities with whom they had a business relationship within the prior two years. *See* N.Y. State Ethics Comm'n, Op. 98-09 (1998).

20. N.Y. Rules of Prof'l Conduct R. 1.11(d)(2) (2009).

21. Similarly, the New York City Conflicts of Interest Law provides that no public servant (lawyers and nonlawyers alike) may "solicit, negotiate for or accept" a position with "any person or firm" involved in a particular matter "while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city." New York City, N.Y., Charter Chapter 68 § 2604(d)(1) (2008).

22. As noted above, it is doubtful that any distinction was intended between "a lawyer who holds public office" (as per Rule 1.11(f)) and "a lawyer currently serving as a public officer or employee" (as used in Rule 1.11(d)).

23. *Compare* N.Y. Rules of Prof'l Conduct R. 1.11(f)(1) (2009) and N.Y. Rules of Prof'l Conduct R. 1.11(f)(2) (2009) *with* N.Y. Lawyer's Code of Prof'l Responsibility DR 8-101(A)(1) (repealed 2009) and N.Y. Lawyer's Code of Prof'l Responsibility DR 8-101(A)(2) (repealed 2009).

24. N.Y. Rules of Prof'l Conduct R. 1.11(f)(1) (2009).

25. N.Y. Rules of Prof'l Conduct R. 1.11(f)(2) (2009).

26. The New York City Charter contains the additional requirement that any public servant who attempts to influence proposed legislation must publicly disclose any financial or other private interest that the public servant may have in the legislation. *See* New York City Charter Chapter 68 § 2605 (2008).

27. N.Y. Rules of Prof'l Conduct R. 1.11(f)(3) (2009). The New York City Conflicts of Interest Law, § 2604(b)(5), prohibits acceptance of a "valuable gift" (defined by Rule of the Conflicts of Interest Board as anything exceeding $50 in value) from *anyone* the public servant "knows is or intends to become engaged in business dealings with the city"— regardless of whether the offer is for the purpose of influencing the offeree's action as a public official. In contrast, New York Public Officers Law § 73(5)(a) provides that a state official may not "solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part." Similarly, N.Y.

Gen. Mun. Law § 805-a(1) prohibits acceptance of gifts "having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. . . ."

28. *See* the text of Part I, *supra*, preceding n.16.

29. N.Y. RULES OF PROF'L CONDUCT R. 1.9(c)(1) (2009). Rule 1.9(c) is generally similar to former DR 5-108(A)(2), but there are some differences. For instance, Rule 1.9(c) governs not only the confidential information of a lawyer's former clients but also the confidential information of the former clients of the lawyer's present or former firm. In addition, unlike DR 5-108(A)(2), Rule 1.9(c)(1) only prohibits the use of a former client's confidential information if that use disadvantages the former client. Finally, while DR 5-108(A)(2) only prevented the *use* of confidential information, Rule 1.9(c)(2) also prevents its *revelation*.

30. The commentary of the NYSBA Committee on Standards of Attorney Conduct notes that in addition to being subject to the Rules of Professional Conduct, lawyers must abide by statutes and other government regulations regarding conflicts of interest that may limit the effect of the Rules of Professional Conduct. *See* Comm. on Standards of Attorney Conduct, NYSBA, *supra* note 10, at 65 (cmt. 1). This applies to the disclosure of confidential government information. For example, while the New York City Charter also prohibits former public servants from disclosing or using for private advantage confidential information obtained through public service that is not otherwise available to the public, "this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity, or conflict of interest." New York City, N.Y., Charter Chapter 68 § 2604(d)(5) (2008). Likewise, an affirmative duty to disclose information (e.g., information concerning criminal activity or fraud before a tribunal) could override the requirements of Rule 1.11.

31. N.Y. RULES OF PROF'L CONDUCT R. 1.11(c) (2009) (emphasis added).

32. *Id.*

33. The broad definition of "matter" in Rule 1.0(l) still applies, although Rule 1.11(e) provides that, only as used in Rule 1.11, the term "matter" does not include or apply to agency rulemaking functions. N.Y. RULES OF PROF'L CONDUCT R. 1.11(e) (2009).

34. *See* New York City, N.Y., Charter Chapter 68 § 2604(d)(4) (2008) ("No person who has served as a public servant shall appear, whether paid or unpaid, before the city, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities."). Article 18 of the N.Y. General Municipal Law contains no post-employment restrictions.

35. *See* N.Y. Pub. Off. Law § 73(8)(a)(ii) (McKinney 2008) ("No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration.").

36. *See* New York City, N.Y., Charter Chapter 68 § 2604(e) (2008) ("A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the agency or agencies involved, the board determines that the position involves no such conflict.").

37. Rule 1.0(j) defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated information adequate for the person to make an informed decision, and after the lawyer has adequately explained to the person the material risks of the proposed course of conduct and reasonably available alternatives."

38. N.Y. RULES OF PROF'L CONDUCT R. 1.0(j) (2009).

39. Comm. on Standards of Attorney Conduct, NYSBA, *supra* note 19, at 161.

40. *See* NYSBA Comm. on Prof'l Ethics, Op. 629 (1992).

41. Joel Stashenko, *supra* note 19.

42. N.Y. RULES OF PROF'L CONDUCT R. 1.11(b) (2009) (emphasis added).

43. N.Y. RULES OF PROF'L CONDUCT R. 1.11(b)(1) (2009).

44. N.Y. RULES OF PROF'L CONDUCT R. 1.11(b)(1)(i) (2009).

45. N.Y. RULES OF PROF'L CONDUCT R. 1.11(b)(1)(ii) (2009).

46. N.Y. RULES OF PROF'L CONDUCT R. 1.11(b)(1)(iii) (2009).

47. N.Y. RULES OF PROF'L CONDUCT R. 1.11(b)(1)(iv) (2009).

48. N.Y. RULES OF PROF'L CONDUCT R. 1.11(b)(2) (2009).

49. *See* Comm. on Standards of Attorney Conduct, NYSBA, *supra* note 10, at 66 (cmt. 4).

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**The author notes with thanks the valuable assistance of James G. Levine, Harvard Law School Class of 2010, in the preparation of this article.**