

**CLIENT-LAWYER RELATIONSHIPS:
DUTIES TO FORMER CLIENTS**

**MRPC
1.9**

RULE 1.9- DUTIES TO FORMER CLIENTS: GENERAL RULE

(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.

RULE 1.9- DUTIES TO FORMER CLIENTS: SPECIFIC RULES

(b) A lawyer **shall not knowingly** represent a person in the same or a **substantially related matter** in which a firm with which the lawyer formerly was associated had previously represented a client:

RULE 1.9- DUTIES TO FORMER CLIENTS: SPECIFIC RULES CONTINUED...

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

UNLESS the former client gives informed consent, confirmed in writing.

1.9- DUTIES TO FORMER CLIENTS: PROHIBITION

(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:

1.9- DUTIES TO FORMER CLIENTS: PROHIBITION CONTINUED...

(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; **OR**

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

1.9 COMMENTS: DUTIES AFTER TERMINATION

[1] ...a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule.

1.9 Comment [1]

Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client.

So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction.

[1] ...Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent.

1.9: COMMENT [2]

[2] The **scope** of a “matter” depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree.

When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited.

1.9: COMMENT [2]

On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client.

The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

1.9 COMMENT [3]

Matters are "substantially related" if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.

[3] ...For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce.

[3] ...Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would **not** be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent.

1.9: COMMENT [3] CONTINUED

Information acquired in a prior representation may have been rendered obsolete by the passage of time.

In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation.

COMMENT [3] CONTINUED

A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter.

A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

LAWYERS MOVING BETWEEN FIRMS

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated.

There are several competing considerations. **First**, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised.

LAWYERS MOVING BETWEEN FIRMS

[4] ...**Second**, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel.

Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association.

LAWYERS MOVING BETWEEN FIRMS

[4] ... In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers.

LAWYERS MOVING BETWEEN FIRMS

[4] ...If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

1.9 COMMENT [5]

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c).

1.9 COMMENT [5]

[5] Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

1.9 COMMENT [6]

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together.

A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients.

1.9 COMMENT [6]

[6] ...In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

1.9 COMMENT: LAWYER'S DUTY

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented.

1.9 COMMENT [8]

Paragraph (c) 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.

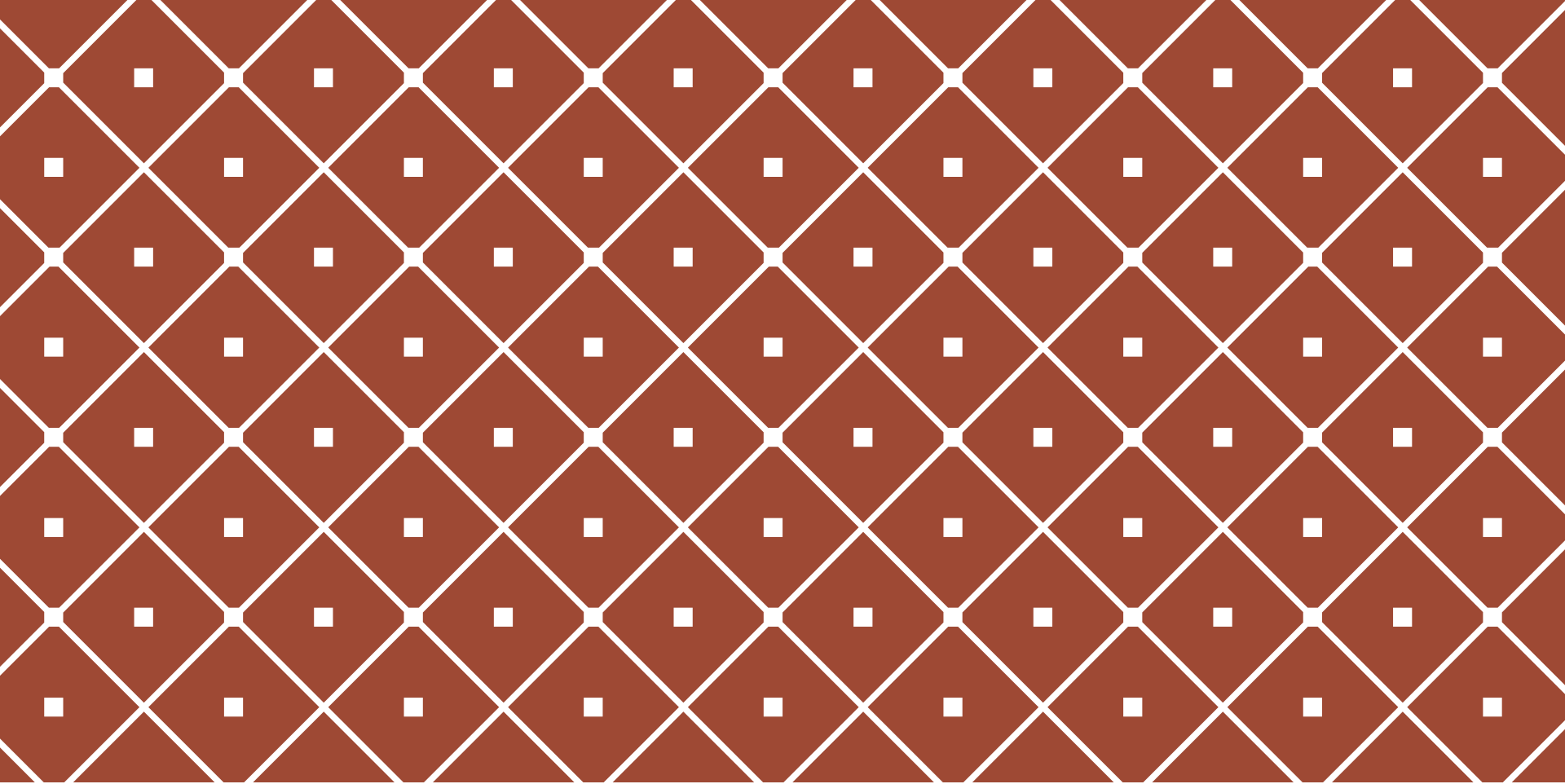
However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

1.9 COMMENTS: WAIVER

[9] 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(e). 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.



**NONPROFIT AND COURT-
ANNEXED LIMITED LEGAL
SERVICES PROGRAMS**

Rule 6.5

RULE 6.5 - NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

RULE 6.5 — COMMENT 1

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer.

In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, **a client-lawyer relationship is established**, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation.

Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

RULE 6.5 – COMMENT 2

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c).

If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel.

Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

RULE 6.5 – COMMENT 3

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily **is not able to check systematically for conflicts of interest**, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) **only if the lawyer knows** that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

RULE 6.5 – COMMENT 4

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that **Rule 1.10 is inapplicable to a representation governed by this Rule** except as provided by paragraph (a)(2).

Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer **knows** that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a).

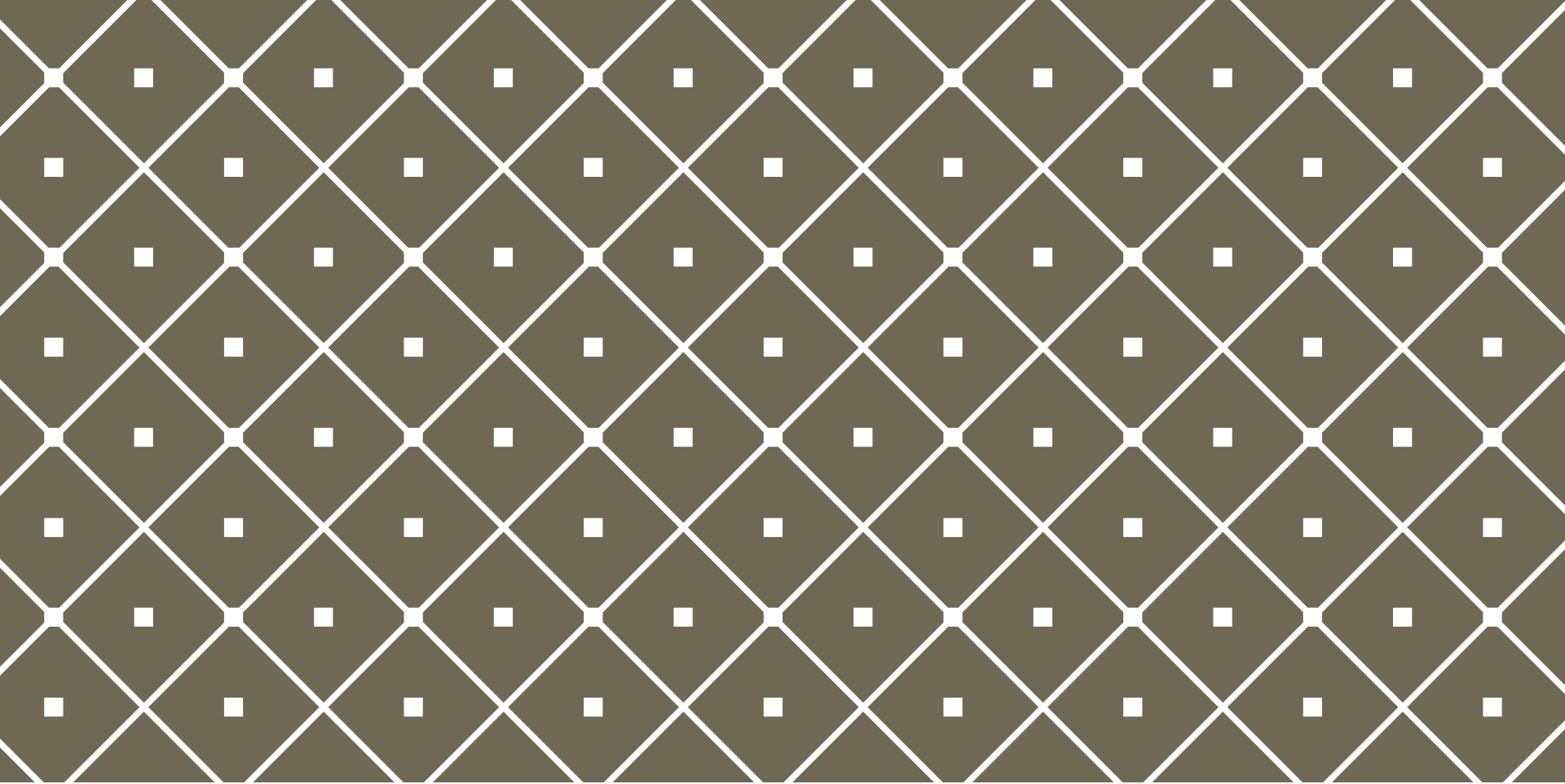
RULE 6.5 – COMMENT 4

[4] ...By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices.

Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

RULE 6.5 – COMMENT 5

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.



MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

Rule 6.3

RULE 6.3 - MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

RULE 6.3 COMMENT 1

[1] ...A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization.

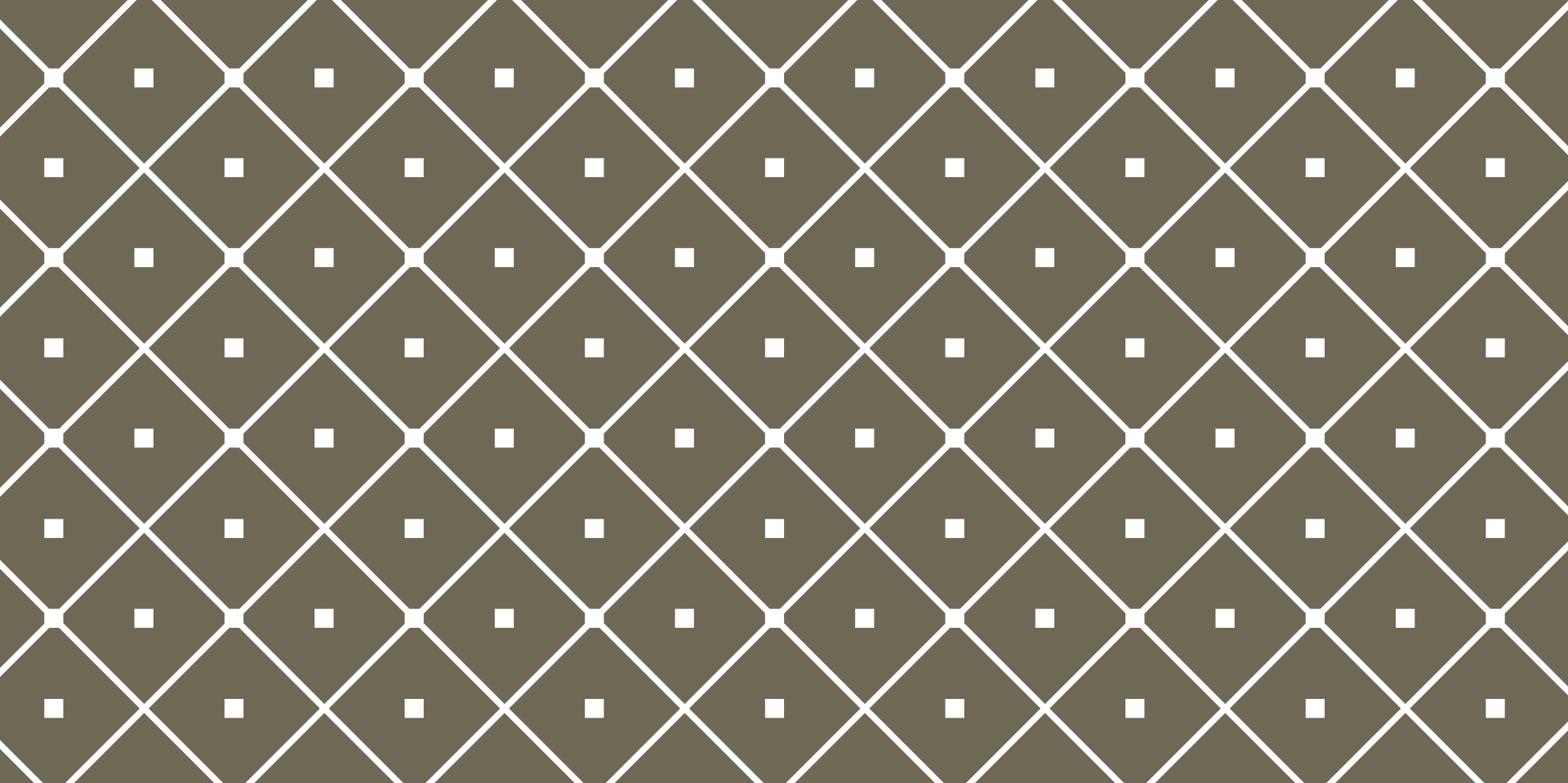
However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients.

If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

RULE 6.3 COMMENT 2

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board.

Established, written policies in this respect can enhance the credibility of such assurances



LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

Model Rule 6.4

RULE 6.4

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer.

When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.