Revocation of Informed Consent and Its Consequences

BY STEPHEN MASCIOCCHI AND ELI WALD

This article explores a lawyer's duties when clients who have consented to a conflict of interest revoke their consent. It covers how such revocations affect lawyers and clients and discusses proactive measures practitioners can use to address potential revocations.

When two clients give informed consent for a lawyer to represent them notwithstanding a conflict of interest, and one client subsequently revokes the consent, may the lawyer continue to represent the non-revoking client? Under the Colorado Rules of Professional Conduct (Colo. RPC), the answer "depends on the circumstances." Revocation of informed consent typically arises when (1) co-clients agree for a lawyer to represent them in the same matter, and (2) two clients agree to be represented by the same lawyer in unrelated matters. This article examines both scenarios and offers practical advice for addressing a revocation of consent.

Colo. RPC 1.7, Comment [21]

When a concurrent conflict of interest arises among current clients, a lawyer may be able to cure the conflict and represent the clients, if "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client" and "each affected client gives informed consent, confirmed in writing."[1] But what happens if a lawyer cures the conflict of interest by obtaining informed consent from each affected client and one of them later revokes its consent?

Colo. RPC 1.7, Comment [21], "Revoking Consent," which is identical to the comment to the corresponding ABA Model Rule,[2] addresses this very question and states:

> A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.[3]

"The termination or withdrawal, however, may not be enough to cure the conflict once the revoking client becomes a former client. So the question arises, can the revoking client preclude the lawyer from continuing to represent the other client(s)?"

Thus, a client who has given informed consent to a conflict may revoke the consent.[4] But the effect of such a revocation is less clear. Usually, because informed consent is one of four conditions needed to cure a conflict of interest,[5] when a client revokes informed consent, a lawyer is faced with a conflict of interest.[6] If the conflict cannot be cured, in part because the revoking client refuses to give informed consent, the revoking client may terminate the lawyer's representation, or the lawyer may have to withdraw from representing the revoking client even if the representation is not terminated. The termination or withdrawal, however, may not be enough to cure the conflict once the revoking client becomes a former client.[7] So the question arises, can the revoking client preclude the lawyer from continuing to represent the other client(s)?

Colo. RPC 1.7, Comment [21] states that the answer "depends on the circumstances,"[8] and it identifies five relevant considerations in assessing the consequences of revocation:

1. "the nature of the conflict,"
2. "whether the client revoked consent because of a material change in circumstances,"
3. "the reasonable expectations of the other client,"
4. whether material detriment to the other clients would result, and
5. whether material detriment to the lawyer would result.[9]

The *Restatement (Third) of the Law Governing Lawyers* (*Restatement*) gives a similar answer, stating

> Revoking consent to the client's own representation, however, does not necessarily prevent the lawyer from continuing to represent other clients . . . . Whether the lawyer may continue the other representation

depends on whether the client was justified in revoking the consent (such as because of a material change in the factual basis on which the client originally gave informed consent) and whether material detriment to the other client or lawyer would result.[10]

In a formal ethics opinion, the North Carolina State Bar followed the ABA Model Rules' and the *Restatement*'s guidance closely, explaining that "[i]n the absence of specific language in the consent agreement addressing the effects of repudiation, a lawyer is not required to withdraw from representing one client if the other client revokes consent without good reason and an evaluation of the factors set out in comment [21] and the Restatement favors continued representation."[11]

Assessing the application of the Comment [21] considerations to determine whether a lawyer may continue to represent other clients following revocation of a client's consent thus depends on the circumstances and requires a contextual exercise of professional judgment. In analyzing different circumstances and examples, Colorado lawyers should initially distinguish between different types of conflicts of interest for which clients may give and then revoke informed consent, because Comment [21]'s first factor is the "nature of the conflict."

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Revocation of Informed Consent to Conflicted Co-Client Representation

Suppose two clients with aligned interests agree that a lawyer may represent them as co-clients in a matter, but after the representation commences, a conflict of interest arises under Colo. RPC 1.7(a). Per Rule 1.7(b)(4), both clients are affected and would need to give informed consent, confirmed in writing, to continue the joint representation. If one client withholds consent, or if both clients initially consent but one later has a change of heart and revokes the consent, may the lawyer continue to represent the other co-client?

The *Restatement* explains that the client's consent to become a co-client "normally presupposes that the co-clients will not develop seriously antagonistic positions."[12] If, however, "such antagonism develops, it might warrant revoking consent. If the conflict is subject to informed consent . . . , the lawyer must thereupon obtain renewed informed consent of the clients, now adequately informed of the change of circumstances"; but "[i]f the conflict is not consentable, or the lawyer cannot obtain informed consent from the other client or decides not to proceed with the representation,"[13] such that the revoking client becomes a former client, "the lawyer must withdraw from representing all affected clients adverse to any former client in the matter."[14] Thus, applying the "nature of the conflict" factor and the "material change in circumstances" factor, the lawyer would not be able to continue to represent the co-client.

Similarly, a client who has given informed consent to be represented as a co-client would be justified in revoking the consent, and the lawyer would not be able to continue to represent the other co-client, if the lawyer failed to represent the revoking client with reasonable loyalty.[15] A client would also be justified in revoking consent, rendering the lawyer unable to continue representing the other co-client, if the co-client materially violated the express or implied terms of the consent, such as by disclosing the revoking client's important confidential information to third persons without justification.[16] In these circumstances, the co-client's or lawyer's improper behavior would constitute a material change in circumstances to the revoking client's detriment and preclude the lawyer from continuing to represent the other co-client.

In contrast, when there is no material change in circumstances and the other co-client reasonably expects the lawyer to continue to represent it, and the other co-client or the lawyer would suffer a material detriment, revocation of consent would not force the lawyer to withdraw from representing the other co-client.[17] A material detriment might exist, for example, because the other co-client and the lawyer "might already have invested time, money, and effort in the representation"; the other co-client "might already have disclosed confidential information and developed a relationship of trust and confidence with the lawyer"; or the co-client relying on the consent "might reasonably have elected to forgo opportunities to take other action."[18] The *Restatement* offers the following illustration:

> Clients A and B validly consent to Lawyer representing them jointly as co-defendants in a breach-of-contract action. On the eve of trial and after months of pretrial discovery on the part of all parties, Client A withdraws consent to the joint representation for reasons not justified by the conduct of Lawyer or Client B and insists that Lawyer cease representing Client B. At this point it would be difficult and expensive for Client B to find separate representation for the

impending trial. Client A's withdrawal of consent is ineffective to prevent the continuing representation of B in the absence of compelling considerations such as harmful disloyalty by Lawyer.[19]

While the *Restatement*'s analysis and illustrations focus on co-clients in litigation matters, revocation of informed consent may also come up in transactional matters.[20] For example, in *Van Kirk v. Miller*, a seller and a buyer agreed on the principal terms of the sale of a sports bar, retained the same lawyer to represent them in a purchase and sales agreement, and waived the conflict of interest by giving informed consent.[21] When a disagreement arose, the buyer terminated the lawyer and the lawyer continued to represent the seller in selling the bar to another buyer. The aggrieved former client sued the lawyer for legal malpractice. The Indiana Court of Appeals explained: "The gravamen of [buyer's] argument is that it was improper for [lawyer] to continue to represent [seller] in the [] transaction because [buyer] terminated his relationship with [lawyer]."[22]

Citing Indiana Professional Conduct Rule 1.7, Comment [21]'s factors, which are the same as those in the Colorado rule and its comments, the *Van Kirk* court rejected the buyer's categorical argument, holding that "the propriety of such representation is based on the circumstances of the case and the nature of the conflict."[23] The court opined that the buyer's termination of the lawyer-client relationship did not automatically revoke the buyer's informed consent and there was no evidence that the buyer told the lawyer to stop representing the seller.[24] In concluding that the lawyer's continued representation of the seller was not improper, the court explained that the transactional nature of the joint representation and the lack of detriment to the former client—there was no evidence that the lawyer favored the seller during the dual representation[25]—supported allowing the lawyer to continue representing the seller.

Notably, the *Restatement*'s examples and illustrations are relatively straightforward because they explore contexts in which Comment [21]'s factors all tend to point in the same direction, either suggesting that the lawyer could continue to represent the non-revoking co-client or indicating that the lawyer could not continue to do so. But what should a Colorado lawyer do in a hard case, where some Comment [21] factors point in one direction and others point in the opposite direction?

Those were the circumstances in *R.O. v. Medalist Holdings*.[26] In that case, a law firm represented several co-defendants in a civil matter pursuant to joint representation and defense agreements. In a related criminal case, one of the defendants pleaded guilty; he then revoked his informed consent and demanded that the law firm withdraw from representing the other co-defendants in the civil case. The trial court, sua sponte, disqualified the law firm.[27]

The Washington Court of Appeals affirmed the disqualification, even though the law firm had represented one non-revoking co-defendant for years and the revocation occurred "close to trial[,] suggest[ing] that disqualification might result in a material detriment" to the non-revoking co-defendant.[28] The appellate court explained that "a material change in circumstances can justify precluding a lawyer from representing a client when another client has revoked consent."[29] The court reasoned that the revoking client's guilty plea was a material change of circumstances because the non-revoking co-defendant might wish to shift blame onto the revoking co-defendant; it thus upheld the law firm's disqualification.[30]

The New York State Bar Association Ethics Committee examined a similarly complicated case in its Ethics Opinion 903,[31] where co-defendants Alpha and Beta gave their informed consent to representation by the inquiring attorney. Two years into the representation, Alpha changed its mind and revoked its informed consent. The attorney wished to withdraw from representing Alpha while continuing to represent Beta.

The case was difficult because on the one hand, Alpha revoked its consent due to a material change in circumstances: "At the time of the consent, Alpha and Beta had no differing interests and did not believe that any differing interests would develop later."[32] However, "after substantial discovery in the litigation, Alpha determined that its interests differed significantly from Beta's interests."[33] On the other hand, because Alpha revoked its consent two years after giving it, withdrawal would result in material detriment to Beta and the attorney.[34]

Although the ethics committee did not resolve this hard case, finding that it lacked "sufficient facts to evaluate all of these factors,"[35] it offered both guidance and practical advice for attorneys assessing the consequences of revocation of consent in co-client conflict-of-interest situations. It pointed out that in a co-client representation, when a lawyer wishes to withdraw from representing the revoking client and continue representing the non-revoking client, the revoking client would become a former client to whom the lawyer would owe duties under New York Rule of Professional Conduct 1.9(a), which is identical to Colo. RPC 1.9(a).[36]

In Opinion 903's case, New York Rules 1.9(a) and 1.16(a) would likely preclude the inquiring attorney from representing Beta in the same litigation because Beta's interests are materially adverse to the interests of former client Alpha. The committee observed that "when differing interests arise during a common representation and prohibit a lawyer from continuing to represent both clients absent the informed consent of both clients, Rule 1.9(a) will prohibit the lawyer from opposing either client in the same matter, *and the lawyer therefore must ordinarily drop both clients*."[37] Thus, while the committee in Opinion 903 did not resolve the particular inquiry, it suggested that in co-client representations, when unexpected differing interests arise among co-clients and one co-client revokes its informed consent, the lawyer ordinarily cannot continue representing the non-revoking client, notwithstanding the non-revoking client's reliance on the consent and the detriment to the non-revoking client from the lawyer's withdrawal.

Sensing that this typical resolution would disappoint lawyers and non-revoking clients alike, the committee in Opinion 903 offered New York lawyers practical advice that also applies to Colorado practitioners. The committee explained that "an advance agreement can avoid many uncertainties surrounding a client's revocation of consent to a multiple representation," adding that "an advance agreement could specify whether a lawyer may continue to represent

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either client after consent is revoked, and whether the lawyer may use or reveal confidential information obtained from the client who has revoked consent during the representation.”[38]

Colorado lawyers representing co-clients likewise should consider specifying in advance the consequences of revocation, including whether the lawyer could continue to represent the non-revoking client. Indeed, the Colorado Bar Association Ethics Committee, in exploring ethical considerations in the joint representation of clients in Opinion 135, gave the same advice in passing, directly quoting Opinion 903:

> *It is prudent to consider expressly addressing in the retention agreement how the lawyer will proceed in the event an unresolved conflict arises from either developments in the matter or withdrawal of an earlier consent.* In at least some circumstances, clients may, by advance or prospective waiver, provide informed consent to the lawyer’s continued representation of one of the previously jointly represented clients while the other client obtains separate counsel. . . . *see also* NY State Bar Assn. Eth. Op. 903, “Revocation of Consent to Conflict” (2012) (implying the validity of an advance agreement that specifies (1) whether a lawyer may continue to represent either client after the other client revokes its consent, and (2) whether the lawyer may use or reveal confidential information obtained from the client that has revoked consent).[39]

Revocation of Informed Consent to Conflicted Representation in Unrelated Matters

Suppose a prospective new client asks a lawyer to represent it. The lawyer runs a conflict check and determines that although the matters are unrelated, the new client’s matter triggers a conflict of interest because the opposing party is the lawyer’s existing client. Per Colo. RPC 1.7(b)(4), both clients are affected, and both would need to give informed consent, confirmed in writing. If the existing client provides informed consent but later has a change of heart and revokes the consent, can the lawyer continue representing the new client? The same five factors from Comment [21]—the nature of the conflict, any material change in circumstances, the reasonable expectations of the non-revoking client, any material detriment to the non-revoking client, and any material detriment to the lawyer—would determine the revocation’s consequences.

The *Restatement* provides a helpful illustration in this context:

> Client A, who consulted Lawyer about a tax question, gave informed advance consent to Lawyer’s representing any of Lawyer’s other clients against Client A in matters unrelated to Client A’s tax question. Client B, who had not theretofore been a client of Lawyer, wishes to retain Lawyer to file suit against Client A for personal injuries suffered in an automobile accident. After Lawyer informs Client B of the nature of Lawyer’s work for Client A, and the nature and risks presented by any conflict that might be produced, Client B consents to the conflict of interest. After Lawyer has undertaken substantial work in preparation of Client B’s case, Client A seeks to withdraw the advance consent for reasons not justified by the conduct of Lawyer or Client B. Even though Client A was Lawyer’s client before Client B was a client, the material detriment to both Lawyer and Client B would render Client A’s attempt to withdraw consent ineffective.[40]

This illustration presents a relatively easy case because it presupposes the lawyer and Client B did nothing to justify the revocation. Presumably, Client A simply had a tardy change of heart about allowing its own lawyer to be adverse to it in unrelated matters.

Antelope Valley Groundwater Cases v. Los Angeles County Waterworks Dist. No. 40 further illustrates the balancing of Comment [21]’s factors. There, a client who gave its informed consent to the conflicted representation of another client subsequently terminated its law

firm, revoked its informed consent, demanded that the firm withdraw from representing the other client, and moved to disqualify the firm when it refused to withdraw.[41] In construing the California Rules of Professional Conduct, the California Court of Appeals held that "[w]hen a client has made an informed decision to consent to an attorney's concurrent representation of themselves as well as another client with potentially adverse interests, courts will not grant a subsequent motion to disqualify that attorney."[42] The court explained that the revoking client gave its initial informed consent to the conflicted representation with full knowledge of all relevant circumstances and waited 10 years before revoking its consent.[43] Further, over that 10-year period, the law firm represented the other client in extensive and prolonged litigation such that disqualifying it would have resulted in material detriment to the other client and the law firm.[44]

By contrast, in the Alabama case *Southern Visions, LLP v. Red Diamond, Inc.*, the court disqualified Red Diamond's law firm, even though Red Diamond had given advance consent for the firm to be adverse to it in unrelated matters.[45] The court reasoned in part that even if Red Diamond's advance consent had been effective, Red Diamond promptly revoked its consent before the firm began representing Southern Visions in a matter adverse to Red Diamond. Once Red Diamond revoked its informed consent, the law firm was precluded from representing Southern Visions against Red Diamond.[46] This ruling makes sense because, given the timely revocation, there was no material detriment to Southern Visions or the law firm—a stark contrast to the 10-year delay in *Antelope Valley*.

On the other hand, the District of Columbia Bar Ethics Committee articulated a somewhat different standard for assessing the consequences of revocation and did not adopt all the ABA Model Rule 1.7, Comment [21] and *Restatement* factors. In D.C. Bar Ethics Opinion 317, although the committee stated that "we see the applicable standard as one that blends the approaches of the Restatement, the Model Rules," and other law,[47] it discounted the nature-of-the-conflict and material-change-of-circumstances factors.[48] Instead, it found that "[t]he principal issue, then, is reliance."[49]

The committee explained that "[i]f there has been detrimental reliance by the other client or the lawyer, the lawyer ordinarily should continue representing the other client."[50] It added: "Given that the lawyer's acceptance of, and beginning work for, the other client . . . typically will constitute reliance," a lawyer will rarely be precluded from representing the other client following revocation of a client's informed consent.[51] In terms of Comment [21], Opinion 317 prioritizes reliance by the other client—that is, "whether material detriment to the other clients . . . would result"—as the primary consideration in assessing the consequences of revocation.[52]

To the extent that Opinion 317 deviates from Colorado's Comment [21], it offers little guidance to Colorado lawyers. Moreover, Opinion 317 does not mention that an earlier draft *Restatement of the Law Governing Lawyers* included similar language but was ultimately rejected by the American Law Institute.[53]

Like the New York committee in Opinion 309, the D.C. committee in Opinion 317 advised specifying the consequences of revocation in an advance agreement between the client and the lawyer. It opined that "[p]referably, the consequences of any change of heart should be addressed [in advance] when the waiver is granted."[54] The committee explained how that could be done:

> This can be done in the engagement letter, the communication in which the waiver is granted, or some other [preferably written] communication . . . between lawyer and client. Such an agreement can address whether a client that changes its mind will have a right to continued representation by the lawyer and, if the lawyer is permitted to withdraw from representation of that client, whether the lawyer may continue representing the other clients who are involved.[55]

The committee then provided a template agreement for D.C. lawyers to follow:

> You have the right to repudiate this waiver should you later decide that it is no longer in your interest. Should the conflict addressed by the waiver be in existence or contemplated at that time, however, and should we or the other client(s) involved have acted in reliance on the waiver, we will have the right—and possibly the duty, under the applicable rules of professional conduct—to withdraw from representing you and (if permitted by such rules) to continue representing the other involved client(s) even though the other representation may be adverse to you.[56]

Colorado lawyers, however, should keep in mind the importance of context. While seeking an advance agreement regarding the consequences of revocation from co-clients will often make sense, seeking such an agreement from clients in unrelated matters might not. Sophisticated clients might reject the D.C. Bar's template language and insist that even if the other client and the lawyer acted in reliance on the waiver, the lawyer still must withdraw from representing both clients following revocation of the consent by one of them. Moreover, even less sophisticated clients might insist on withdrawal once the lawyer adequately explains the ramifications of revocation to them in obtaining their informed consent.[57]

In other words, Opinion 317 advises using specific language to address the effects of repudiation because it assumes lawyers will usually get clients to agree to favorable language allowing lawyers to continue to represent the other client following revocation. However, without an advance agreement addressing the consequences of revocation, a lawyer is not required to withdraw from representing one client if the Comment [21] factors favor continued representation, so Colorado lawyers should carefully consider whether to seek an advance agreement.

Notwithstanding its limited applicability in Colorado, Opinion 317 compellingly suggests that in assessing the circumstances of revocation, a relevant consideration should be the length of time between granting and revoking the informed consent. It highlights that "if some time has elapsed between the grant of the waiver and its revocation," revocation would more likely result in material detriment to the other client or the lawyer.[58] Therefore, the more time passes between granting and revoking the informed consent, the more likely it is that the

other client and lawyer would experience a material detriment.

Summing Up the Advice

Colo. RPC 1.7, Comment [21] states that a client who consents to a conflict may revoke the consent and, like any other client, terminate the lawyer's representation at any time.[59] Thus, a Colorado lawyer who relies on a client's informed consent to represent a co-client or another client assumes a risk of revocation.[60] When two clients give informed consent to a conflict of interest and one subsequently revokes the consent, whether a lawyer may continue to represent the non-revoking client depends on the circumstances, "including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result."[61]

Revocation of informed consent usually arises when co-clients agree to be represented by a lawyer in the same matter, and when two clients agree to waive a conflict created when the lawyer's representation of one client is adverse to the other in unrelated matters. When a conflict arises in the representation of co-clients in litigation, some courts and ethics opinions favor the material-change-in-circumstances factor, disallowing continued representation of the non-revoking co-client when the revocation was caused by a material change of circumstances, even if the non-revoking co-client and the attorney relied on the informed consent and would experience material detriment.[62] If no material change of circumstances took place, however, and if the non-revoking client and the lawyer relied on the informed consent, the lawyer may continue to represent the non-revoking co-client. When the nature of the conflict is representation of co-clients in a transactional matter or representation of one client adverse to another client in unrelated matters, courts and ethics committees weigh the totality of the circumstances without favoring the change of circumstances factor.

To minimize the risk of revocation of informed consent, Colorado lawyers should consider expressly addressing in the retention agreement how the lawyer will proceed if a client revokes an earlier consent.[63] Such an advance agreement can specify whether a lawyer may continue to represent either client after the other client revokes its consent, and whether the lawyer may use or reveal confidential information obtained from the client that has revoked consent. But after a lawyer adequately explains revocation, some clients may insist that if they revoke their informed consent, even where the other client and the lawyer acted in reliance on the informed consent, the lawyer would have to withdraw from representing both clients. Finally, if a lawyer withdraws from representing either client because withdrawal is permitted or required, the lawyer must "take steps to the extent reasonably practicable" to protect the now-former client's interests.[64] CL

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NOTES

1. Colo. RPC 1.7(b)(1) and (4). The conflicted representation also must not be prohibited by law and must "not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation." Colo. RPC. 1.7(b)(2) and (3).
2. ABA Model Rule of Prof. Conduct 1.7, cmt. [21]. This article discusses other states' ethics opinions that also apply the language of the Model Rule and comment [21].
3. Colo. RPC 1.7, cmt. [21].
4. *See also Restatement (Third) of the Law Governing Lawyers* (hereinafter *Restatement*) § 122, cmt. f (Am. Law Inst. 2000) ("A client who has given informed consent to an otherwise conflicted representation may at any time revoke the consent.").
5. Colo. RPC 1.7(b)(1)–(4).
6. An exception exists where the revoked informed consent was for a future conflict (*see* Colo. RPC 1.7, cmt. [22]) and the conflict has not materialized.
7. *See* Colo. RPC 1.9(a).
8. Colo. RPC 1.7, cmt. [21].
9. *Id.*
10. *Restatement* § 122, cmt. f.
11. N.C. State Bar, 2007 Formal Ethics Op. 11, "Lawyer's Duties When Client Revokes Consent to Conflict" at 1 (2007).
12. *Restatement* § 122, cmt. f.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*, Illustration 6.
20. Direct-adversity conflicts can arise in

transactional matters, *see* Colo. RPC 1.7, cmt. [7], and can be cured under Colo. RPC 1.7(b).

21. *Van Kirk v. Miller*, 869 N.E.2d 534, 536–37 (Ind.App. 2007).

22. *Id.* at 546.

23. *Id.*

24. *Id.*

25. *Id.*

26. *R.O. v. Medalist Holdings*, 2021 Wash. App. LEXIS 367 (Feb. 22, 2021) (unpublished).

27. *Id.* at *5.

28. *Id.* at *9.

29. *Id.* at *9–10.

30. *Id.* at *10.

31. N.Y. State Bar Ass'n Ethics Op. 903 (2012).

32. *Id.* at ¶ 2.

33. *Id.*

34. *See id.* at ¶¶ 9–14 (citing N.Y. Rule of Prof. Conduct 1.7, cmt. [21] (stating that whether a co-client's "revocation prevents the lawyer from continuing the other representation depends . . . on the circumstances, including . . . 'whether material detriment to the other clients or the lawyer would result.'") and *Restatement* § 122, cmt. f (concerning "whether material detriment to the other client would result")). Colo. RPC 1.7, cmt. [21] is identical to N.Y. RPC 1.7, cmt. [21].

35. N.Y. State Bar Ass'n Ethics Op. 903 at ¶ 17.

36. *Id.* at ¶¶ 11–12. N.Y. Rule 1.9(a) states that "[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."

37. N.Y. State Bar Ass'n Ethics Op. 903 at ¶ 13 (emphasis added).

38. *Id.* at ¶ 4.

39. CBA Formal Op. 135, "Ethical Considerations in the Joint Representation of Clients in the Same Matter or Proceeding" at 17–18 (2018) (emphasis added, internal citations omitted).

40. *Restatement* § 122, Illustration 7.

41. *Antelope Valley Groundwater Cases v. Los Angeles Cty. Waterworks Dist. No. 40*, 241 Cal. Rptr. 3d 692 (Cal.Ct.App. 2018).

42. *Id.* at 704.

43. *Id.* at 709–10.

44. *Id.* at 712–13.

45. *S. Visions, LLP v. Red Diamond, Inc.*, 370 F.Supp.3d 1314 (N.D.Ala. 2019).

46. *Id.* at 1328.

47. D.C. Bar Ethics Op. 317, "Repudiation of Conflict of Interest Waivers" at *6 (2002).

48. *Id.* at *3–4.

49. *Id.* at *6.

50. *Id.*

51. *Id.* at *7.

52. *Id.* at *6.

53. *See Restatement (Third) of the Law Governing Lawyers* § 202 at 3 (Tentative Draft No. 3 1990).

54. D.C. Bar Ethics Op. 317 at *1.

55. *Id.* at *3.

56. *Id.* at *8, n.17.

57. *See* Colo. RPC 1.0(e) ("'Informed consent' denotes 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.").

58. D.C. Bar Ethics Op. 317 at *2.

59. Colo. RPC 1.7, cmt. [21].

60. *Restatement* § 122, cmt. b.

61. Colo. RPC 1.7, cmt. [21].

62. Irrespective of Comment [21] and its factors, withdrawal from representing both co-clients may be mandated by Colo. RPC 1.9(a) and 1.16(a)(1). *See supra* notes 35–37 and corresponding text.

63. CBA Formal Op. 135 at 17.

64. Colo. RPC 1.16(d).