

Chairman of the Executive Committee  
Shelby Williams Industries, Inc.  
11-111 Merchandise Mart  
Chicago, Il. 60654  
312/527-3593 (Fax: 312/527/3597)

Born: April 29, 1924, Germany

Immigrated: United States, 1938

Education: Roosevelt University, Chicago, B.S.C., 1948, Honorary Doctor of Humane Letters Degree, 1997

Military: World War II, 1943-1945; Korean War, 1950-1952; 1st Lt. Military Intelligence. Served as a paratrooper with 82nd Airborne Division as military intelligence specialist. Participated in 5 campaigns, Normandy, Northern France, Rhineland, Ardennes-Alsace and Central European Theater.

Decorations: Purple Heart and Bronze Star

**Business Career:**

Co-founder of Shelby Williams Industries, Inc.

**Awards & Honors:**

Outstanding Small Businessman of the Year, 1963

Industrialist of the Year Award, 1973

Recipient of Horatio Alger Award for Distinguished Americans 1981

Outstanding Business Leader Award, Northwood Institute, 1983

American Jewish Committee Human Rights Award, 1986

8th Annual Humanitarian Award, Holocaust Memorial Foundation of Illinois, 1993

1995 Volunteer of the Year Award, University of Tennessee

1999 Hospitality Design Magazine Lifetime Achievement Award

**Member;**

Chicago Association of Commerce

Chicago Convention Bureau, Board of Directors

America-Israel Chamber of Commerce, Midwest Chapter, Board of Directors

Board of Advisors, University of Tennessee, Knoxville; School of Human Ecology

Board of Development Council, University of Tennessee, Knoxville

Florida International Board of Advisors, Interior Design Department

Life Member Roosevelt University Board of Trustees, Chicago

Board of Directors, Amalgamated Trust & Savings Bank, Chicago

Board of Jewish Federation of Chicago, 1985-1991-1996 & 1998

General Campaign Chairman for Jewish United Fund, 1987

National Vice Chairman, United Jewish Appeal 1988-1994

Co-Chairman of the Kristallnacht Memorial Event, Chicago 1988

Former Officer and Honorary Board Member Congregation Bnai Emunah

Founder of United States Holocaust Memorial Museum, Washington, DC

General Campaign Chairman, Jewish United Fund, Chicago 1997

Chairman of the Board, Jewish Federation of Chicago 1998

Endowments of Steinfeld Family:

- 1973- Commissioned Mosaic on Outside Wall of Congregation Bnai Emunah
- 1983- Established Shelby Williams Fund for Excellence, University of Tennessee \*\* Over 100 Scholarships awarded 1983-1998 \*\*
- 1984- Dining Room at Mt. Sinai Hospital, Chicago
- 1984- 20th Century Decorative Art Gallery, Art Institute, Chicago
- 1985- Fifth Floor Gallery, Orchestra Hall, Chicago
- 1985- Research Chair, Weizmann Institute of Science, Israel
- 1986- Established Sam Horwitz Memorial Scholarship Fund at Illinois Institute of Technology
- 1991- Manfred Steinfeld Hospitality School at Roosevelt University, Chicago
- 1992- Chair Judaic Studies, University of Tennessee, Knoxville

Scholarships:

- Roosevelt University, University of Tennessee, Illinois Institute of Technology
- 1996- Established Naftali Steinfeld (Brother) Memorial Fund for Summer Experience in Israel
- 1997- Established Howard Hirsch Memorial Scholarship Fund at Roosevelt University
- 1998- Established Danny Cunniff Research Fund for Leukemia Research
- 1998- Major Grant for Leukemia Research to Hadassah Hospital, Jerusalem
- 1998- Established Naftali Steinfeld Education Center in Jerusalem, Israel; in memory of brother, who gave his life in the fight for Israel Independence - 1945
- 1999 Grant for Leukemia Research to St. Jude Research Hospital, Memphis, TN

Former Positions & Memberships:

- 1958-1970 Board of Directors, Coronet Industries

Editorial Features:

- 1966 Business Week
- 1976 Forbes Magazine
- 1980 Associated Press
- 1984 Forbes Magazine
- 1986 Fortune Magazine
- 1990 USA Today
- 1990 Crains Chicago
- 1993 Barrons

Television Features:

- CNN Pinnacle June 7, 1986
- PBS Profiles of Success 1985
- BBC & Discovery Channel May 1945

BIOGRAPHY

HOWARD N. GILBERT

HOME ADDRESS AND TELEPHONE NUMBER: 180 EAST PEARSON ST., CHICAGO, IL 60611  
(312) 943-9380

PLACE AND DATE OF BIRTH: Chicago, Illinois, August 19, 1928

WIFE'S NAME: Jacqueline Glasser Gilbert

PRIMARY AND SECONDARY EDUCATION: Public Schools - City of Chicago

UNDERGRADUATE EDUCATION: University of Chicago - Ph.B. 1947

LAW SCHOOL: Yale Law School - J.D. 1951

MILITARY SERVICE: United States Navy - 1951-1955  
Destroyer Duty, United States Atlantic Fleet  
Most Significant Duty: Chief of Staff -  
Commander, Destroyer Squadron 10

EMPLOYMENT: Partner, Holleb & Coff  
55 E. Monroe Street  
Chicago, Illinois 60603  
312/807-4600

DIRECTORSHIPS: Albany Bank & Trust Company, N.A.  
(Outstanding SBIC Lender 1988-1989)  
Miscellaneous Other Corporations

CHARITABLE AND PUBLIC ACTIVITIES: Chairman of Board - Mount Sinai Hospital  
Medical Center of Chicago (1974-1975)  
Director, Chicago Hospital Council (1977-83)  
Director, Jewish Federation of Metropolitan  
Chicago (1978-86)  
Director, Mount Sinai Hospital Medical  
Center of Chicago (1968-Present)  
Director, Interreligious Council of  
Urban Affairs (1970's)  
Director, Skokie Valley Sheltered Workshop  
(early 1970's)  
Director, Board of Jewish Education (1964-  
1974)  
Chairman, Lawyer's Division, Jewish United  
Fund (1989)  
Member, Mayor Washington's Transition  
Committee on Health Care (Beginning  
of First Term)  
Member, Commission on Medical Care on  
Southwest Side (Campbell Commission)  
(1970's)

## ALVIN ROBERT UMANS

HOME:  
132 E. DELAWARE PLACE  
CHICAGO, IL 60611-1445

## RESUME

OFFICE:  
RHC/SPACEMASTER CORP.  
1400 NORTH 25TH AVENUE  
MELROSE PARK, IL 60160-3001

### Personal Information

Born: March 11, 1927, New York City  
Family: Three children

### Education

University of Rochester - Student, 1945

Military Service: U.S. Army, 1945-1946

### Employment History

#### Textile Mills Company, Chicago, Illinois

1954-1956: Sales Manager

#### Reflector Hardware Corp., Melrose Park, Illinois

1956-1958: Regional Sales Manager  
1959-1962: National Sales Manager  
1962-1965: Vice President  
1965-1992: President, Treasurer, Director

#### RHC/Spacemaster Corp., Melrose Park, Illinois

1992-1997: President, CEO  
1997-Present: Chairman, CEO

### Directorships/Trusteeships

- Goer Manufacturing Co., Inc., Charleston, S.C.: Vice President, Board of Directors
- Discovery Plastics, Oregon: Chairman
- Spacemaster Corp., Delaware: Chairman, Treasurer, Director
- Morgan Marshall Industries, Inc., Illinois: Chairman
- Capitol Hardware, Inc., Illinois: Chairman
- Spartan Showcase, Inc., Missouri: Director, Vice President
- Adams Communications, Chicago, Illinois: Director
- Monroe Communications, Chicago, Illinois: Board of Directors
- Mt. Sinai Hospital Medical Center, Chicago, Illinois: Trustee; Chairman of the Board 1987-89
- Schwab Rehabilitation Hospital, Chicago, Illinois: Chairman of the Board 1987-1989
- Sinai Health Systems, Chicago, Illinois: Director, Chairman 1995-1997
- Cook County Building Advisory Committee, 1994-present
- Driehaus Mutual Funds, Trustee, 1996-present
- Milton & Rose Zadek Fund, Board of Directors, 1965-1978
- Cinema/Chicago, Governing Board Member, 1988-1989.

**ALVIN ROBERT UMANS**  
**RESUME**  
**PAGE 2 OF 2** \_\_\_\_\_ /

**Associations/Memberships**

- Chicago Presidents' Organization
- World Presidents' Organization
- The Hundred Club of Cook County
- Standard Club, Chicago

ATTACHMENT C

Excerpt from Minutes of the Board of Directors  
of Reading Broadcasting, Inc.  
June 15, 1995

This still does not help Channel 51 at the present, because of the duplication of programming out of Vineland. It does, however, provide a tremendous reason to switch programming services.

Irv Cohen asked if this discussion was leading to Telemundo.

Mike Parker explained that switching to Telemundo, one of the top two Spanish language networks in the country, removes all duplicative programming issues. Coupled with the Home Viewer Satellite Act, WTVE will have access to all cable headends in the Philadelphia ADI, amounting to nearly 2 million cable subscribers.

Secondly, due to the important market segment it serves, Telemundo is a network looked upon with great favor by the FCC and Supreme Court. Though nothing is certain, it is highly improbable that the FCC or Supreme Court would include a Telemundo affiliate in its list of "specialty stations", or shopping stations, that have such a difficult time qualifying as legitimate forms of programming entitled to must carry.

In addition, the Philadelphia ADI is about to gain one more shopping channel. WTGI-TV 61, the former Telemundo affiliate, was recently purchased by Bud Paxson. Mr. Paxson was one of the founders of Home Shopping Network. He is busily engaged in forming another network, "IN-TV", which stands for infomercial TV. They intend to run 30-minute advertiser-supported programming on a 24-hour per day basis.

In regards to must carry, no one is certain how the FCC or the Supreme Court will rule on another shopping service that substantially duplicates HSN in format, but not content. In any event, the competition will increase for the shop-at-home dollar in the Philadelphia market - yet another reason to switch to Telemundo.

Speculation is the Supreme Court may take another 6-18 months before arriving at a final decision to extend must carry to all stations. The underlying argument is the constitutionality of the mandate. Claiming First Amendment infringements, Turner Broadcasting, Time Warner and other multiple systems operators filed a formal objection the day after the cable bill went into effect. During the ensuing months, many stations across the country were randomly subpoenaed - including WTVE - to furnish documents showing how carriage or lack thereof has in any way influenced their ability to generate revenue. To date, no one has heard the outcome of these findings, as the Supreme Court is still deliberating.

ATTACHMENT D

Declaration of Milton Podolsky

DECLARATION

Milton Podolsky, under penalty of perjury, hereby declares the following to be true and correct:

1. I am a shareholder of Adams Communications Corporation ("Adams"), an applicant for a construction permit for a new television station on Channel 51 in Reading, Pennsylvania. I am preparing this Declaration for submission to Administrative Law Judge Richard L. Sippel in connection with Adams's Opposition to a Motion to Dismiss (or to Enlarge the Issues) filed against Adams by Reading Broadcasting, Inc. ("RBI").

2. I am the founder of Podolsky Northstar Realty Partners, LLC ("Northstar"), a real estate development firm. I have been engaged in real estate development for more than two decades. I have been represented in this business by Paul Young, an attorney in Fort Lauderdale, Florida. Mr. Young's representation of my interests dates back to 1980. Mr. Young's law firm was acquired by the firm of Holland & Knight, and that Holland & Knight (through Mr. Young) now represents my Florida interests.

3. On the morning of October 14, 1999, I met with Howard N. Gilbert (another Adams shareholder), other shareholders of Adams, and Adams's communications counsel, Harry F. Cole, in a meeting room at the Standard Club of Chicago. In that meeting I was told that Holland & Knight represents RBI. I had not been aware of that representation previously. While it is possible that I received a notice concerning the taking of my deposition which was sent to me by Holland & Knight, I have no recollection of receiving that notice directly -- rather, I recall learning of

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my scheduled deposition from Mr. Gilbert, who has served as Adams's central repository for information relating to Adams's case before the Federal Communications Commission.

4. For several months I have been preoccupied in attending to my wife, who is undergoing extensive surgical and other treatments for cancer. Because of the effect of those treatments, she was in the intensive care unit of Northwestern Medical Center for more than four weeks in September-October, 1999. In fact, October 14 was her 27th consecutive day in intensive care. While I continued to attend to my business affairs during this time while staying at my wife's bedside all day everyday, I was not able to review every single item addressed to me, so it is not surprising to me that I may not have seen a deposition notice addressed to me.

5. When, at the October 14, 1999 meeting, Mr. Gilbert told me that Holland & Knight represents RBI, I advised Mr. Gilbert that I know Mr. Young of that firm, that I have met with Mr. Young on numerous occasions over the past 20 years to discuss business matters, and that Mr. Young had represented me in a number of real estate transactions in Florida. Mr. Gilbert and Mr. Cole asked me for details of the legal representation that Mr. Young had provided so that they could evaluate whether the representation of RBI by Holland & Knight is a conflict of interest. However, at that very moment I received an emergency telephone call from the hospital advising that my wife had begun to bleed, a development which, in light of her condition, raised

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serious concerns. I immediately left the meeting and rushed to the hospital. I spent the remainder of the day with my wife.

6. The next day (October 15, 1999) at 8:30 a.m I appeared at the offices where my deposition was to be conducted. There I met with Messrs. Gilbert and Cole, who again inquired about the details of Mr. Young's representation of me and my interests. I told them that I believed that, from 1980 to present, Mr. Young and his firm had represented me and my family in the real estate development and ownership business in Florida, including the acquisition, financing, development and sale of a certain real property in Deerfield Beach, Florida, the value of which was approximately \$4.4 million. I also told them that Holland & Knight had recently represented us in the refinancing of an industrial building that we owned in Deerfield Beach and that this refinancing, amounting to approximately \$1.2 million, had closed on or about August 31, 1999. That closing was the culmination of approximately six weeks of legal work, for which Holland & Knight's legal fees were approximately \$9,500. I also told Messrs. Gilbert and Cole that, in connection with his representation of me in the current refinancing of the Deerfield Beach property, I had provided to Mr. Young a personal balance sheet or statement of my net worth.

7. Mr. Gilbert asked me who owned the Deerfield Beach properties for which Holland & Knight had provided legal services. I responded that I believed that I held a general partnership interest.

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8. I understand that, on the basis of the information which I gave them, Messrs. Gilbert and Cole then participated in a telephone conference with RBI's counsel and the Presiding Judge in which Messrs. Gilbert and Cole raised questions concerning a possible conflict of interest on the part of Holland & Knight. Immediately following that conference, I met again with Messrs. Gilbert and Cole, who asked me for further details concerning the ownership of the Deerfield Beach property. As I attempted to answer their questions, I realized that my recollection of the underlying details might be imperfect. Accordingly, we made a speakerphone call to Phyllis Garay, a Vice President of Northstar, to ask her to review my formal business records and to confirm exactly what my ownership interest was. Ms. Garay reviewed the records and advised us that the information I had provided to Messrs. Gilbert and Cole was mistaken. She said that the owner of the Deerfield Beach property was Deerpod Associates, Ltd. ("Deerpod"), a limited partnership in which, according to Ms. Garay, I had not been a general partner or beneficiary.

9. Immediately upon learning that I had been mistaken in these matters, Messrs. Gilbert and Cole conferred with me and determined, with my concurrence, that an effort should be made to locate RBI's counsel, so that my deposition could go forward. However, RBI's counsel had already left the building and could not be found.

10. Following up on the question of the ownership of

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Deerpod, on October 20, 1999, Mr. Gilbert and I again spoke with Ms. Garay. During that conversation she modified her previous statement. She said that review of Northstar's records indicates that Mipod Inc. (a closely held corporation) is one of the general partners of Deerpod. I am a shareholder of Mipod Inc. through the Milton Podolsky Revocable Trust (which owns 25% of Mipod, Inc.). Further, she advised that I am the President and a director of Mipod Inc.

11. I have been informally advised by Holland & Knight that any files which they may have concerning me or my business interests have been designated as unavailable for any purposes relating to RBI.

12. On the basis of all of these considerations, I have no objection to Holland & Knight's continued representation of RBI.

  
\_\_\_\_\_  
Milton Podolsky

Date: 11/21/99

ATTACHMENT E

Affidavit of Phyllis Garay

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK         )

**AFFIDAVIT OF PHYLLIS GARAY**

Phyllis Garay, being first duly sworn on oath, deposes and states that she is over 21 years of age, and if called to testify could competently testify to the following facts:

1. I am Asset Manager and Senior Vice President of Podolsky Northstar Realty Partners, LLC, a real estate development firm.
2. On the morning of October 15, 1999, I received a telephone call from Milton Podolsky, Howard Gilbert, and Harry Cole. They asked me whether Milton Podolsky was an owner of any property located in Deerfield Beach, Florida.
3. I then located in the records of Podolsky Northstar a "building sheet" for this particular property and told Messrs. Podolsky and Gilbert that title to the building was held by Deerpod Associates, Ltd., a Florida limited partnership. I further informed them that Mr. Podolsky was not a partner in this partnership nor a beneficiary of any of the trusts that were partners to this partnership.
4. In a subsequent teleconference with Messrs. Podolsky and Gilbert on the morning of October 20, 1999, I further informed Messrs. Podolsky and Gilbert that the partners to Deerpod Associates, Ltd. were, and are, as follows: as general partners, Mipod Inc. (2%), a closely held corporation, and the Gerald E. Podolsky Revocable Trust (1%); and as limited partners, the Lois Podolsky Revocable Trust (12%), Bonnie Podolsky Family Trust (12%), Randy Podolsky Family Trust (9.5%), Steven Podolsky Family Trust (9.5%), Gerald E. Podolsky Revocable Trust (49%), and the Podfund 1988 Limited Partnership (5%).

5. The records that I reviewed indicate that Milton Podolsky is not, and was not, a beneficiary of any of the trusts that are partners in Deerpod Associates, Ltd. Mr. Podolsky, however, through the Milton Podolsky Revocable Trust, is a 25% shareholder in Mipod Inc. Mr. Podolsky is also the President and a director of that corporation which is one of the general partners to the partnership Deerpod Associates, Ltd.

Further, Affiant sayeth not.

*Phyllis Garay*  
 Phyllis Garay

Subscribed and sworn to before me  
 this 22<sup>nd</sup> day of November, 1999.

*Lynne C. Sturtecky*  
 Notary Public



ATTACHMENT F

D.C. Rules of Professional Conduct  
Rule 1.7 Conflict of Interest: General Rule  
(with accompanying commentary)

D.C. RULES OF PROFESSIONAL CONDUCT

criminal statutes such as those dealing with embezzlement. In order for those who are providing counseling services to evaluate properly the lawyer-counselee's problems and enhance the prospects for rehabilitation, it is necessary for the counselors to receive completely candid information from the lawyer-counselee. Such candor is not likely if the counselor, for example, would be compelled by Rule 8.3 to report the lawyer-counselee's conduct to Bar Counsel, or if the lawyer-counselee feared that the counselor could be compelled by prosecutors or others to disclose information.

[31] It is similarly in the interest of the public to encourage lawyers to seek the assistance of the D.C. Bar's Lawyer Practice Assistance Committee to address management problems in their practices. In order for those who are providing counseling services through the Lawyer Practice Assistance Committee to evaluate properly the lawyer-counselee's problems and enhance the prospects for self-improvement by the counselee, paragraph (i) adds a provision addressing the confidentiality obligations of lawyers who are assisting in the counseling programs of the Lawyer Practice Assistance Committee.

[32] These considerations make it appropriate to treat the lawyer—counselee relationship as a lawyer-client relationship, and to create an additional limited class of information treated as secrets or confidences subject to the protection of Rule 1.6. The scope of that information is set forth in paragraph (h) and (i). The lawyer-client relationship is deemed to exist only with respect to the obligation of confidentiality created under Rule 1.6, and not to obligations created elsewhere in these Rules, including the obligation of zealous representation under Rule 1.3 and the obligation to avoid conflicts of interest set forth in Rules 1.7 and 1.9. The obligation of confidentiality extends to non-lawyer assistants of lawyers serving the committee. See Rule 5.1.

[33] Notwithstanding the obligation of confidentiality under paragraph (i), during the period in which a lawyer-counselee is subject to a probationary or monitoring order of the Court of Appeals or the Board on Professional Responsibility in a disciplinary case instituted pursuant to Rule XI of the Rules of the Court of Appeals Governing the Bar, communications between the counselor and the lawyer being counseled under the auspices of the Lawyer Practice Assistance Committee shall be subject to disclosure in accordance with an Order of the Court or the Board, since the participation of the lawyer-counselee in the programs of the committee in such circumstances is not voluntary.

[34] Ethical rules established by the District of Columbia Court of Appeals with respect to the kinds of information protected from compelled disclosure may not be accepted by other forums or jurisdictions. Therefore, the protections afforded to lawyer-counselees by paragraphs (h) and (i) may not be available to preclude disclosure in all circumstances. Furthermore, lawyers who are members of the bar of other jurisdictions may not be entitled under the ethics rules applicable to members of the bar in such other jurisdictions, to forgo reporting violations to disciplinary authorities pursuant to the other jurisdictions' counterparts to Rule 8.3.

**Government Lawyers**

[35] Subparagraph (d)(2) was revised, and paragraph (i) was added, to address the unique circumstances raised by attorney-client relationships within the government.

[36] Subparagraph (d)(2)(A) applies to both private and government attorney-client relationships. Subparagraph (d)(2)(B) applies to government lawyers only. It is designed to permit disclosures that are not required by law or court order under Rule 1.6(d)(2)(A), but which the government authorizes its attorneys to make in connection with their professional services to the government. Such disclosures may be authorized or required by statute, executive order, or regulation, depending on the constitutional or statutory powers of the authorizing entity. If so authorized or required, subparagraph (d)(2)(B) governs.

[37] The term "agency" in paragraph (i) includes, inter alia, executive and independent departments and agencies, special commissions, committees of the legislature, agencies of the legislative branch such as the General Accounting Office, and the courts to the extent that they employ lawyers (e.g., staff counsel) to counsel them. The employing agency has been designated the client under this rule to provide a commonly understood and easily determinable point for identifying the government client.

[38] Government lawyers may also be assigned to provide an individual with counsel or representation in circumstances that make clear that an obligation of confidentiality runs directly to that individual and that subparagraph (d)(2)(A), not (d)(2)(B), applies. It is, of course, acceptable in this circumstance for a government lawyer to make disclosures about the individual representation to supervisors or others within the employing governmental agency so long as such disclosures are made in the context of, and consistent with, the agency's representation program. See, e.g., 28 C.F.R. §§ 50.15 and 50.16. The relevant circumstances, including the agreement to represent the individual, may also indicate the extent to which the individual client to whom the government lawyer is assigned will be deemed to have granted or denied consent to disclosures to the lawyer's employing agency. Examples of such representation include representation by a public defender, a government lawyer representing a defendant sued for damages arising out of the performance of the defendant's government employment, and a military lawyer representing a court-martial defendant.

**RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE**

**(a) A LAWYER SHALL NOT ADVANCE TWO OR MORE ADVERSE POSITIONS IN THE SAME MATTER.**

**(b) EXCEPT AS PERMITTED BY PARAGRAPH (c)**

## CLIENT-LAWYER RELATIONSHIP

**BELOW, A LAWYER SHALL NOT REPRESENT A CLIENT WITH RESPECT TO A MATTER IF:**

**(1) THAT MATTER INVOLVES A SPECIFIC PARTY OR PARTIES, AND A POSITION TO BE TAKEN BY THAT CLIENT IN THAT MATTER IS ADVERSE TO A POSITION TAKEN OR TO BE TAKEN BY ANOTHER CLIENT IN THE SAME MATTER, EVEN THOUGH THAT CLIENT IS UNREPRESENTED OR REPRESENTED BY A DIFFERENT LAWYER;**

**(2) SUCH REPRESENTATION WILL BE OR IS LIKELY TO BE ADVERSELY AFFECTED BY REPRESENTATION OF ANOTHER CLIENT;**

**(3) REPRESENTATION OF ANOTHER CLIENT WILL BE OR IS LIKELY TO BE ADVERSELY AFFECTED BY SUCH REPRESENTATION; OR**

**(4) THE LAWYER'S PROFESSIONAL JUDGMENT ON BEHALF OF THE CLIENT WILL BE OR REASONABLY MAY BE ADVERSELY AFFECTED BY THE LAWYER'S RESPONSIBILITIES TO OR INTERESTS IN A THIRD PARTY OR THE LAWYER'S OWN FINANCIAL, BUSINESS, PROPERTY, OR PERSONAL INTERESTS.**

**(c) A LAWYER MAY REPRESENT A CLIENT WITH RESPECT TO A MATTER IN THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH (b) ABOVE IF EACH POTENTIALLY AFFECTED CLIENT PROVIDES CONSENT TO SUCH REPRESENTATION AFTER FULL DISCLOSURE OF THE EXISTENCE AND NATURE OF THE POSSIBLE CONFLICT AND THE POSSIBLE ADVERSE CONSEQUENCES OF SUCH REPRESENTATION.**

**(d) IF A CONFLICT NOT REASONABLY FORESEEABLE AT THE OUTSET OF A REPRESENTATION ARISES UNDER PARAGRAPH (b)(1) AFTER THE REPRESENTATION COMMENCES, AND IS NOT WAIVED UNDER PARAGRAPH (c), A LAWYER NEED NOT WITHDRAW FROM ANY REPRESENTATION UNLESS THE CONFLICT ALSO ARISES UNDER PARAGRAPHS (b)(2), (b)(3), or (b)(4).**

### **COMMENT:**

[1] Rule 1.7 is intended to provide clear notice of circumstances that may constitute a conflict of interest. Rule 1.7 (a) sets out the limited circumstances in which representation of conflicting interests is absolutely prohibited even with the consent of all involved clients. Rule 1.7(b) sets out those circumstances in which representation is barred in the absence of informed client consent. The difference between Rule 1.7(a) and Rule 1.7(b) is that in the former, the lawyer is representing multiple interests in the same matter, while in the latter the

lawyer is representing a single interest, but a client of the lawyer who is represented by different counsel has an interest adverse to that advanced by the lawyer. The application of Rules 1.7(a) and 1.7(b) to specific facts must also take into consideration the principles of imputed disqualification described in Rule 1.10. Rule 1.7(c) states the procedure that must be used to obtain client consent if representation is to commence or continue in the circumstances described in Rule 1.7(b). Rule 1.7(d) governs withdrawal in cases arising under Rule 1.7(b)(1).

### **Representation Absolutely Prohibited—Rule 1.7(a)**

[2] Institutional interests in preserving confidence in the adversary process and in the administration of justice preclude permitting a lawyer to represent adverse positions in the same matter. For that reason, paragraph (a) prohibits such conflicting representations, with or without client consent.

[3] The same lawyer (or law firm, see Rule 1.10) should not espouse adverse positions in the same matter during the course of any type of representation, whether such adverse positions are taken on behalf of clients or on behalf of the lawyer or an association of which the lawyer is a member. On the other hand, for purposes of Rule 1.7(a), and "adverse" position does not include inconsistent or alternative positions advanced by counsel on behalf of a single client. Rule 1.7(a) is intended to codify the result reached in D.C. Bar Legal Ethics Committee Opinion 204, including the conclusion that a rulemaking whose result will be applied retroactively in pending adjudications is the same matter as the adjudications, even though treated as separate proceedings by an agency. However, if the adverse positions to be taken relate to different matters, the absolute prohibition of paragraph (a) is inapplicable, even though paragraphs (b) and (c) may apply.

[4] The absolute prohibition of paragraph (a) applies only to situations in which a lawyer would be called upon to espouse adverse positions for different clients in the same matter. It is for this reason that paragraph (a) refers to adversity with respect to a "position taken or to be taken" in a matter rather than adversity with respect to the matter or the entire representation. This approach is intended to reduce the costs of litigation in other representations where parties have common, nonadverse interests on certain issues, but have adverse (or contingently or possibly adverse) positions with respect to other issues. If, for example, a lawyer would not be required to take adverse positions in providing joint representation of two clients in the liability phase of a case, it would be permissible to undertake such a limited representation. Then, after completion of the liability phase, and upon satisfying the requirements of paragraph (c) of this Rule, and of any other applicable Rules, the lawyer could represent either one of those parties as to the damages phase of the case, even though the other, represented by separate counsel as to damages, might have an adverse position as to that phase of the case. Insofar as the absolute prohibition of paragraph (a) is concerned, a lawyer may represent two parties that may be adverse to each other as to some aspects of the case so long as the same lawyer does not represent

## D.C. RULES OF PROFESSIONAL CONDUCT

both parties with respect to those positions. Such a representation comes within paragraph (b), rather than paragraph (a), and is therefore subject to the consent provisions of paragraph (c).

[5] The ability to represent two parties who have adverse interests as to portions of a case may be limited because the lawyer obtains confidences or secrets relating to a party while jointly representing both parties in one phase of the case. In some circumstances, such confidences or secrets might be useful, against the interests of the party to whom they relate, in a subsequent part of the case. Absent the consent of the party whose confidences or secrets are implicated, the subsequent adverse representation is governed by the "substantial relationship" test, which is set forth in Rule 1.9.

[6] The prohibition of paragraph (a) relates only to actual conflicts of positions, not to mere formalities. For example, a lawyer is not absolutely forbidden to provide joint or simultaneous representation if the clients' positions are only nominally but not actually adverse. Joint representation is commonly provided to incorporators of a business, to parties to a contract, in formulating estate plans for family members, and in other circumstances where the clients might be nominally adverse in some respect but have retained a lawyer to accomplish a common purpose. If no actual conflict of positions exists with respect to a matter, the absolute prohibition of paragraph (a) does not come into play. Thus, in the limited circumstances set forth in Opinion 143 of the D.C. Bar Legal Ethics Committee, this prohibition would not preclude the representation of both parties in an uncontested divorce proceeding, there being no actual conflict of positions based on the facts presented in Opinion 143.

### **Representation Conditionally Prohibited - Rule 1.7(b)**

[7] Paragraphs (b) and (c) are based upon two principles: (1) that a client is entitled to wholehearted and zealous representation of its interests, and (2) that the client as well as the lawyer must have the opportunity to judge and be satisfied that such representation can be provided. Consistent with these principles, paragraph (b) provides a general description of the types of circumstances in which representation is improper in the absence of informed consent. The underlying premise is that disclosure and consent are required before assuming a representation if there is any reason to doubt the lawyer's ability to provide wholehearted and zealous representation of a client or if a client might reasonably consider the representation of its interests to be adversely affected by the lawyer's assumption of the other representation in question. Although the lawyer must be satisfied that the representation can be wholeheartedly and zealously undertaken, if an objective observer would have any reasonable doubt on that issue, the client has a right to disclosure of all relevant considerations and the opportunity to be the judge of its own interests.

[8] A client may, on occasion, adopt unreasonable positions with respect to having the lawyer who is representing that client

also represent other parties. Such an unreasonable position may be based on an aversion to the other parties being represented by a lawyer, or on some philosophical or ideological ground having no foundation in the rules regarding representation of conflicting interests. Whatever difficulties may be presented for the lawyer in such circumstances as a matter of client relations, the unreasonable positions taken by a client do not fall within the circumstances requiring notification and consent. Clients have broad discretion to terminate their representation by a lawyer and that discretion may generally be exercised on unreasonable as well as reasonable grounds.

[9] If the lawyer determines or can foresee that an issue with respect to the application of paragraph (b) exists, the only prudent course is for the lawyer to make disclosure, pursuant to paragraph (c), to each affected client and enable each to determine whether in its judgment the representation at issue is likely to affect its interests adversely.

[10] Paragraph (b) does not purport to state a uniform rule applicable to cases in which two clients may be adverse to each other in a matter in which neither is represented by the lawyer or in a situation in which two or more clients may be direct business competitors. The matter in which two clients are adverse may be so unrelated or insignificant as to have no possible effect upon a lawyer's ability to represent both in other matters. The fact that two clients are business competitors, standing alone, is usually not a bar to simultaneous representation. Thus, in a matter involving a specific party or parties, paragraphs (b)(1) and (c) require notice and consent if the lawyer will take a position on behalf of one client adverse to another client even though the lawyer represents the latter client only on an unrelated position or in an unrelated matter. Paragraphs (b)(2), (3), (4) and (c) require disclosure and consent in any situation in which the lawyer's representation of a client may be adversely affected by representation of another client or by any of the factors specified in paragraph (b)(4).

### **Lawyer's Duty to Make Inquiries to Determine Potential Conflicts**

[11] The scope of and parties to a "matter" are typically apparent in on-the-record adversary proceedings or other proceedings in which a written record of the identity and the position of the parties exists. In Rule 1.7(b)(1), the phrase, "matter involving a specific party or parties" refers to such situations. In other situations, however, it may not be clear to a lawyer whether the representation of one client is adverse to the interests of another client. For example, a lawyer may represent a client only with respect to one or a few of the client's areas of interest. Other lawyers, or non-lawyers (such as lobbyists), or employees of the client (such as government relations personnel) may be representing that client on many issues whose scope and content are unknown to the lawyer. Clients often have many representatives acting for them, including multiple law firms, nonlawyer lobbyists, and client employees. A lawyer retained for a limited purpose may not be aware of the full range of a client's other

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interests or positions on issues. Except in matters involving a specific party or parties, a lawyer is not required to inquire of a client concerning the full range of that client's interests in issues, unless it is clear to the lawyer that there is a potential for adversity between the interests of clients of the lawyer. Where lawyers are associated in a firm within the meaning of Rule 1.10(a), the rule stated in the preceding sentence must be applied to all lawyers and all clients in the firm. Unless a lawyer is aware that representing one client involves seeking a result to which another client is opposed, Rule 1.7 is not violated by a representation that eventuates in the lawyer's unwittingly taking a position for one client adverse to the interests of another client. The test to be applied here is one of reasonableness and may turn on whether the lawyer has an effective conflict checking system in place.

### Situations That Frequently Arise

[12] A number of types of situations frequently arise in which disclosure and informed consent are usually required. These include joint representation of parties to criminal and civil litigation, joint representation of incorporators of a business, joint representation of a business or government agency and its employees, representation of family members seeking estate planning or the drafting of wills, joint representation of an insurer and an insured, representation in circumstances in which the personal or financial interests of the lawyer, or the lawyer's family, might be affected by the representation, and other similar situations in which experience indicates that conflicts are likely to exist or arise. For example, a lawyer might not be able to represent a client vigorously if the client's adversary is a person with whom the lawyer has longstanding personal or social ties. The client is entitled to be informed of such circumstances so that an informed decision can be made concerning the advisability of retaining the lawyer who has such ties to the adversary. The principles of disclosure and consent are equally applicable to all such circumstances, except that if the positions to be taken by two clients in a matter as to which the lawyer represents both are actually adverse, then, as provided in paragraph (a), the lawyer may not undertake or continue the representation with respect to those issues even if disclosure has been made and consent obtained.

### Organization Clients

[13] 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. See 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 (e.g., 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.

[14] 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. See generally 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. *Id.* 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. See ABA Opinion 92-365, *supra*. 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 consent under Rule 1.7 (c), such adverse representation ordinarily would be improper if:

- (a) the adverse matter is the same as, or substantially related to, the matter on which the lawyer represents the organization client.
- (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
- (c) such representation seeks a result that is likely to have a material adverse effect on the financial condition of the organization client.

[15] 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 represen-

tation 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-subsidiary 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 [14] 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 [14] are not applicable.

[16] 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.

[17] The provisions of paragraphs [13] through [16] 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 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 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.

[18] 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 consent from the second client whom the lawyer proposes to represent adverse to an affiliate, owner or other constituent of the first client.

### **Disclosure and Consent**

[19] Disclosure and consent are not mere formalities. Adequate disclosure requires such disclosure of the parties and their interests and positions as to enable each potential client to make a fully informed decision as to whether to proceed with the contemplated representation. If a lawyer’s obligation to one or another client or to others or some other consideration precludes making such full disclosure to all affected parties, that fact alone precludes undertaking the representation at issue. Full disclosure also requires that clients be made aware of the possible extra expense, inconvenience, and other disadvantages that may arise if an actual conflict of position should later arise and the lawyer be required to terminate the representation.

[20] The Rule does not require that disclosure be in writing or in any other particular form in all cases. Nevertheless, it should be recognized that the form of disclosure sufficient for more sophisticated business clients may not be sufficient to permit less sophisticated clients to provide fully informed consent. Moreover, under District of Columbia substantive law, the lawyer bears the burden of proof to demonstrate the existence of consent. For those reasons, it would be prudent for the lawyer to provide potential joint clients with at least a written summary of the considerations disclosed and to request and receive a written consent.

[21] The term “consent” is defined in the Terminology section of these Rules. As indicated there, a client’s consent must not be coerced either by the lawyer or by any other person. In particular, the lawyer should not use the client’s investment in previous representation by the lawyer as leverage to obtain or maintain representation that may be contrary to the client’s best interests. If a lawyer has reason to believe that undue influence has been used by anyone to obtain agreement to the representation, the lawyer should not undertake the representation.

### **Withdrawal**

[22] It is much to be preferred that a representation that is likely to lead to a conflict be avoided before the representation begins, and a lawyer should bear this fact in mind in considering whether disclosure should be made and consent obtained at the outset. If, however, a conflict arises after a representation has been undertaken, and the conflict falls within paragraph (a), or if a conflict arises under paragraph (b) and informed and uncoerced consent is not or cannot be obtained pursuant to paragraph (c), then the lawyer should withdraw from the representation, complying with Rule 1.16. Where a conflict is not foreseeable at the outset of representation and arises only under Rule 1.7(b)(1), a lawyer should seek consent to the conflict at the time that the conflict becomes evident, but if such consent is not given by the opposing party in the matter, the lawyer need not withdraw. In determining whether a conflict is reasonably foreseeable, the test is an objective one. In determining the reasonableness of a lawyer’s conduct, such factors as whether the lawyer (or lawyer’s firm) has an adequate conflict-checking

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system in place, must be considered. Where more than one client is involved and the lawyer must withdraw because a conflict arises after representation has been undertaken, the question of whether the lawyer may continue to represent any of the clients is determined by Rule 1.9.

### **Imputed Disqualification**

[23] All of the references in Rule 1.7 and its accompanying Comment to the limitation upon a "lawyer" must be read in light of the imputed disqualification provisions of Rule 1.10, which affect lawyers practicing in a firm.

[24] In the government lawyer context, Rule 1.7(b) is not intended to apply to conflicts between agencies or components of government (federal, state, or local) where the resolution of such conflicts has been entrusted by law, order, or regulation to a specific individual or entity.

### **Businesses Affiliated with a Lawyer or Firm**

[25] Lawyers, either alone or through firms, may have interests in enterprises that do not practice law but that, in some or all of their work, become involved with lawyers or their clients either by assisting the lawyer in providing legal services or by providing related services to the client. Examples of such enterprises are accounting firms, consultants, real estate brokerages, and the like. The existence of such interests raises several questions under this Rule. First, a lawyer's recommendation, as part of legal advice, that the client obtain the services of an enterprise in which the lawyer has an interest implicates paragraph 1.7(b)(4). The lawyer should not make such a recommendation unless able to conclude that the lawyer's professional judgment on behalf of the client will not be adversely affected. Even then, the lawyer should not make such a recommendation without full disclosure to the client so that the client can make a fully informed choice. Such disclosure should include the nature and substance of the lawyer's or the firm's interest in the related enterprise, alternative sources for the non-legal services in question, and sufficient information so that the client understands that the related enterprise's services are not legal services and that the client's relationship to the related enterprise will not be that of client to attorney. Second, such a related enterprise may refer a potential client to the lawyer; the lawyer should take steps to assure that the related enterprise will inform the lawyer of all such referrals. The lawyer should not accept such a referral without full disclosure of the nature and substance of the lawyer's interest in the related enterprise. See also Rule 7.1(b). Third, the lawyer should be aware that the relationship of a related enterprise to its own customer may create a significant interest in the lawyer in the continuation of that relationship. The substantiality of such an interest may be enough to require the lawyer to decline a proffered client representation that would conflict with that interest; at least Rule 1.7(b)(4) and (c) may require the prospective client to be informed and to consent before the representation could be undertaken. Fourth, a lawyer's interest in a related enterprise

that may also serve the lawyer's clients creates a situation in which the lawyer must take unusual care to fashion the relationship among lawyer, client, and related enterprise to assure that confidences and secrets are properly preserved pursuant to Rule 1.6 to the maximum extent possible. See Rule 5.3.

## **RULE 1.8 CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS**

**(a) A LAWYER SHALL NOT ENTER INTO A BUSINESS TRANSACTION WITH A CLIENT OR KNOWINGLY ACQUIRE AN OWNERSHIP, POSSESSORY, SECURITY, OR OTHER PECUNIARY INTEREST ADVERSE TO A CLIENT UNLESS:**

**(1) THE TRANSACTION AND TERMS ON WHICH THE LAWYER ACQUIRES THE INTEREST ARE FAIR AND REASONABLE TO THE CLIENT AND ARE FULLY DISCLOSED AND TRANSMITTED IN WRITING TO THE CLIENT IN A MANNER WHICH CAN BE REASONABLY UNDERSTOOD BY THE CLIENT;**

**(2) THE CLIENT IS GIVEN A REASONABLE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT COUNSEL IN THE TRANSACTION; AND**

**(3) THE CLIENT CONSENTS IN WRITING THERETO.**

**(b) A LAWYER SHALL NOT PREPARE AN INSTRUMENT GIVING THE LAWYER OR A PERSON RELATED TO THE LAWYER AS PARENT, CHILD, SIBLING, OR SPOUSE ANY SUBSTANTIAL GIFT FROM A CLIENT, INCLUDING A TESTAMENTARY GIFT, EXCEPT WHERE THE CLIENT IS RELATED TO THE DONEE.**

**(c) PRIOR TO THE CONCLUSION OF REPRESENTATION OF A CLIENT, A LAWYER SHALL NOT MAKE OR NEGOTIATE AN AGREEMENT GIVING THE LAWYER LITERARY OR MEDIA RIGHTS TO A PORTRAYAL OR ACCOUNT BASED IN SUBSTANTIAL PART ON INFORMATION RELATING TO THE REPRESENTATION.**

**(d) WHILE REPRESENTING A CLIENT IN CONNECTION WITH CONTEMPLATED OR PENDING LITIGATION OR ADMINISTRATIVE PROCEEDINGS, A LAWYER SHALL NOT ADVANCE OR GUARANTEE FINANCIAL ASSISTANCE TO THE CLIENT, EXCEPT THAT A LAWYER MAY PAY OR OTHERWISE**

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of November, 1999, I caused copies of the foregoing "Opposition of Adams Communications Corporation to 'Motion to Dismiss Adams' Application, or Alternatively, to Enlarge Issues (Abuse of Process)'" to be hand delivered (as indicated below), addressed to the following:

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Harry F. Cole