

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Professional Conduct Rules Table of Contents](#)

NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT

CLIENT-LAWYER RELATIONSHIP

Rule 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer in that firm shall knowingly represent a person in a matter in which the newly-associated lawyer is disqualified under Rule 1.9, unless the personally disqualified lawyer is timely screened from any form of participation in the matter. For purposes of this rule, screening requires that:

(1) The personally disqualified lawyer shall provide the former client or the former client's counsel with an affidavit attesting that the personally disqualified lawyer will not participate in the matter and will not discuss the matter with any other firm member or employee. Promptly upon final disposition of the matter, if requested by the former client or former client's counsel, the personally disqualified lawyer shall provide a further affidavit describing the lawyer's compliance with these undertakings.

(2) At least one partner, officer or shareholder of the firm shall provide the former client or former client's counsel with an affidavit attesting that all firm members and employees are aware of the requirement that the personally disqualified lawyer be screened from participation in and discussions about the matter, and describing the procedures being followed to screen the personally disqualified lawyer; and an agreement to respond promptly to any written inquiries or objections on behalf of the former client about the screening procedures adopted by the firm. Promptly upon termination of the matter, if requested by the former client or former client's counsel, a partner, officer or shareholder of the firm shall provide an additional affidavit describing the firm's compliance with procedures established for screening of the personally disqualified lawyer.

(3) Notwithstanding the foregoing, a personally disqualified lawyer can not be screened under the provisions of this rule if that lawyer had substantial involvement in, or received substantial material information about, a matter that is ongoing at the time of the firm transfer and that would be the focus of the screening procedures.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

Ethics Committee Comment

The disqualification of lawyers associated in a firm with former government lawyers is governed by Rule 1.11(b) and (c).

The disqualification of lawyers associated in a firm with a lawyer-official is governed by Rule 1.11A(c).

Rule 1.10(c) is new and applies when a lawyer moves from one law firm to another law firm. The new provisions establish screening procedures similar although not identical to those that now exist in the Rules for former government lawyers, see Rule 1.11; and prospective clients, see Rule 1.18.

Rule 1.10(c) differs from the ABA Model Rule, and draws on more restrictive procedures that have been adopted in Massachusetts and Oregon. More specifically, unlike the ABA Model Rule, screening would not be available for "migrating" lawyers who had substantial involvement in, or acquired substantial material information about, a matter ongoing at the time of the transfer between firms. In addition, to ensure attention to the establishment of effective screening procedures, the new provisions require that separate affidavits be prepared by the personally disqualified attorney and by a partner, officer or shareholder of the new firm. These affidavits would be prepared at the time of the attorney's transfer and implementation of screening procedures; and again, if requested by the former client or former client's counsel, at the time of termination of the matter that is the subject of the screening procedures. If a challenge is made to the availability, or implementation, of the screening procedures authorized under 1.10(c), the burden will be on the law firm carrying out the screening to demonstrate compliance with the Rule's requirements.

While perhaps more restrictive than rules in place in other jurisdictions, the new provisions seek to achieve a proper balance between the increasing mobility of attorneys between firms and the right of clients of the new firms to retain the law firms of their choice; and the equally-important interests of the former clients in assuring that confidential information relating to their representation will not be used against them by the migrating lawyer's new firm.

2004 ABA Comment

RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(e).

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Professional Conduct Rules Table of Contents](#)