

It's Time for the ABA to have a Screening Rule

If the ABA is to continue to be in the forefront of developments in legal ethics it must amend its Model Rules dealing with screening.

For years there has been a Model Rule permitting screening for government lawyers who move to private firms. Why should there not be screening for private lawyers who move between firms?

Nearly half the states have already adopted rules that generally permit screening for lawyers who move between private firms. In the last six years alone, ten states have adopted rules permitting screening for lawyers moving between private firms.

Our "Model" Rules of Professional Conduct are intended to be just that: a trusted model that the states of the union can follow in crafting their own rules of professional conduct.

The 2000 Ethics Commission proposed a screening rule to provide for lawyers who move from one employment in the private sector to another so that conflicts of interest would not be imputed to all the other lawyers of the firm to which that lawyer moved, provided there was effective screening. The House of Delegates unfortunately did not adopt that recommendation. Yet, as noted above, since the 2000 Commission's recommendation was defeated, ten states have acted to adopt rules permitting screening.

The Standing Committee on Ethics and Professional Responsibility has proposed an amendment to Rule 1.10 of the Model Rules to permit screening and make the screen effective and transparent.

The purpose for a screening rule is to protect clients by requiring that private firms to which a lawyer moves from another firm institute appropriate checks so that the clients of both the old firm can be confident that their secrets and proprietary information are protected.

Opponents of the proposed amendment to Rule 1.10 argue that screening is simply a rule to permit "side-switching." That is not at all correct. Instead, a screening rule acts alongside the Model Rule that already categorically prohibits such a lawyer from participating "on the other side" of a matter, to preserve former clients' confidences and information while permitting a lawyer the freedom to move from one firm to another.

It is not uncommon today for a lawyer in the course of her professional life to move from one private firm to another, sometimes more than once during a professional career. An effective screening procedure provides the necessary protection. The ABA needs this Model Rule amendment. It is an eminently workable solution to real need, providing transparency to all interested parties. Rules of this type have proven non-controversial and harmless in jurisdiction after jurisdiction, and it is time for the Association to return to its traditional role as a leader, not a follower.

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