

	<p style="text-align: center;"><b>American Bar Association CPR Policy Implementation Committee</b></p> <p style="text-align: center;"><b>Variations of the ABA Model Rules of Professional Conduct Rule 1.10</b></p> <p><b><i>Client-Lawyer Relationship</i></b></p> <p><b>Rule 1.10 Imputation Of Conflicts Of Interest: General Rule</b></p> <p>(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</p> <ul style="list-style-type: none"><li>(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or</li><li>(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer’s association with a prior firm, and<ul style="list-style-type: none"><li>(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;</li><li>(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and</li><li>(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.</li></ul></li></ul> <p>(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:</p> <ul style="list-style-type: none"><li>(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and</li><li>(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.</li></ul> <p>(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.</p> <p>(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.</p> <p style="text-align: center;"><b>Comments</b></p> <p><b>Definition of “Firm”</b></p>
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[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 to or more lawyers constitute a firm within this definition can depend upon the specific facts. See Rule 1.10,

**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)(1) 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(a)(2) and 1.10 (b).

[3] The rule in paragraph (a) does not prohibit representation whether 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 as 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 for 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

	<p>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).</p> <p>[7] Rule 1.10(a)(2) similarly removes the imputation otherwise required by Rule 1.10(a), but unlike section (c), it does so without requiring that there be informed consent by the former client. Instead, it requires that the procedures laid out in sections (a)(2)(i)-(iii) be followed. A description of effective screening mechanisms appears in Rule 1.0(k). Lawyers should be aware, however, that, even where screening mechanisms have been adopted, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.</p> <p>[8] Paragraph (a)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.</p> <p>[9] The notice required by paragraph (a)(2)(ii) generally should include a description of the screened lawyer’s prior representation and be given as soon as practicable after the need for screening becomes apparent. It also should include a statement by the screened lawyer and the firm that the client’s material confidential information has not been disclosed or used in violation of the Rules. The notice is intended to enable the former client to evaluate and comment upon the effectiveness of the screening procedures.</p> <p>[10] The certifications required by paragraph (a)(2)(iii) give the former client assurance that the client’s material confidential information has not been disclosed or used inappropriately, either prior to timely implementation of a screen or thereafter. If compliance cannot be certified, the certificate must describe the failure to comply.</p> <p>[11] Where a lawyer has joined a private firm after having represented the government, imputation is governed under 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.</p> <p>[12] 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.</p> <p style="text-align: center;">* * *</p> <p>Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see <a href="http://www.abanet.org/cpr/pic/">http://www.abanet.org/cpr/pic/</a></p>
<p>AL Effective</p>	<p>(a) Adds reference to Rules 1.8(a) through (k) and 2.2; deletes “unless” and all subsections thereafter</p>

<p>2/19/09</p>	<p>Adds as (b):</p> <p>When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.</p> <p>AL Rules (c) is identical to MR (b) AL Rules (d) is identical to MR (c) AL Rules does not adopt MR (d)</p> <p>Comments:</p> <p>First part of first section, "Definition of Firm," is similar to MR Comment [1], but with changes in wording.</p> <p>Replaces section, "Definition of Firm," with:</p> <p>For purposes of the Rules of Professional Conduct, the term "firm" includes lawyers in a private firm, and lawyers employed in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm.</p> <p>However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.</p> <p>With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates. Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that</p>
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	<p>is involved, and on the specific facts of the situation.</p> <p>Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7, and 1.9.</p> <p>Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences, and therefore to the protections provided in Rules 1.6, 1.9, and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11.”</p> <p>The Section, “Principles of Imputed Disqualification,” is almost identical to Comment [2] of the identically titled section in MR, except that AL Rules references different Rules.</p> <p>Does not adopt Comments [3] through [12].</p> <p>Adds Section: “Lawyers Moving Between Firms:”</p> <p>When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.</p> <p>Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner</p>
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	<p>in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.</p> <p>The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the ABA former Code of Professional Responsibility. This rubric has a twofold problem.</p> <p>First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client.</p> <p>Second, since “impropriety” is undefined, the term “appearance of impropriety” is question begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety. A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.</p> <p>Adds Section: “Confidentiality:”</p> <p>Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together.</p> <p>A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.</p> <p>Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.</p> <p>Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.</p> <p>Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9.</p>
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	<p>Adds Section: “Adverse Positions:”</p> <p>The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by Rule 1.9(a). Thus, if a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters, so long as the conditions of paragraphs (b) and (c) concerning confidentiality have been met.</p>
AK Effective 4/15/09	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). (b)(2) Adds to end of paragraph: “or the firm retains records containing such information.”</p> <p>Comments: Adopts [1] through [6], as well as [11] (Comment [7] in State Rules) and [12] (Comment [8] in State Rules). Changes references to Rules to correspond to Alaska Rules.</p>
AZ Effective 12/1/03	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). Adds (d): screening as in Ethics 2000 Nov 2000 draft.</p> <p>When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under ER 1.9 unless:</p> <ol style="list-style-type: none"> <li>(1) the matter does not involve a proceeding before a tribunal in which the personally disqualified lawyer had a substantial role;</li> <li>(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and</li> <li>(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.</li> </ol> <p>(e) is MR (d)</p> <p>Comments: Adopts [1] through [6], as well as [11] (Comment [7] in State Rules) and [12] (Comment [8] in State Rules). Changes references to Rules to correspond to Arizona Rules.</p>
AR Effective 5/1/05	<p>(a): adds 3.7 to list after 1.9</p> <p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p> <p>Comments: Adopts ABA Model Rules Comments; Adds: [9] The duty to avoid the appearance of impropriety discussed in Comment [37] to Rule 1.7 is likewise applicable to Rule 1.9 and Rule 1.10.</p>
CA	CA Rules equivalent to MR:

<p>Current Rule effective 8/28/09; Comments on adoption of MR due: 11/13/09</p>	<p><b>Rule 1-650 Limited Legal Services Programs</b></p> <p>(A) A member who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the member or the client that the member will provide continuing representation in the matter:</p> <p style="padding-left: 40px;">(1) is subject to rule 3-310 only if the member knows that the representation of the client involves a conflict of interest; and</p> <p style="padding-left: 40px;">(2) has an imputed conflict of interest only if the member knows that another lawyer associated with the member in a law firm would have a conflict of interest under rule 3-310 with respect to the matter.</p> <p>(B) Except as provided in paragraph (A)(2), a conflict of interest that arises from a member’s participation in a program under paragraph (A) will not be imputed to the member’s law firm.</p> <p>(C) The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.</p> <p>Comments, titled “Discussion” in CA Rules:</p> <p>[1] Courts, government agencies, bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons in addressing their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, whenever a lawyer-client relationship is established, there is no expectation that the lawyer’s representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.</p> <p>[2] A member who provides short-term limited legal services pursuant to rule 1-650 must secure the client’s informed consent to the limited scope of the representation. If a short-term limited representation would not be reasonable under the circumstances, the member may offer advice to the client but must also advise the client of the need for further assistance of counsel. See rule 3-110. Except as provided in this rule 1-650, the Rules of Professional Conduct and the State Bar Act, including the member’s duty of confidentiality under Business and Professions Code § 6068(e)(1), are applicable to the limited representation.</p> <p>[3] A member who is representing a client in the circumstances addressed by rule 1-650 ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (A)(1) requires compliance with rule 3-310 only if the</p>
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	<p>member knows that the representation presents a conflict of interest for the member. In addition, paragraph (A)(2) imputes conflicts of interest to the member only if the member knows that another lawyer in the member’s law firm would be disqualified under rule 3-310.</p> <p>[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the member’s law firm, paragraph (B) provides that imputed conflicts of interest are inapplicable to a representation governed by this rule except as provided by paragraph (A)(2). Paragraph (A)(2) imputes conflicts of interest to the participating member when the member knows that any lawyer in the member’s firm would be disqualified under rule 3-310. By virtue of paragraph (B), moreover, a member’s participation in a short-term limited legal services program will not be imputed to the member’s law firm or preclude the member’s law firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program’s auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.</p> <p>[5] If, after commencing a short-term limited representation in accordance with rule 1-650, a member undertakes to represent the client in the matter on an ongoing basis, rule 3-310 and all other rules become applicable. (Added by order of the Supreme Court, operative August 28, 2009.)</p>
<p>CO Effective 1/1/08</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). Adds:(e) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:</p> <ol style="list-style-type: none"> <li>(1) the matter is not one in which the personally disqualified lawyer substantially participated;</li> <li>(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;</li> <li>(3) the personally disqualified lawyer gives prompt written notice (which shall contain a general description of the personally disqualified lawyer’s prior representation and the screening procedures to be employed) to the affected former clients and the former clients’ current lawyers, if known to the personally disqualified lawyer, to enable the former clients to ascertain compliance with the provisions of this Rule; and</li> <li>(4) the personally disqualified lawyer and the partners of the firm with which the personally disqualified lawyer is now associated reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.</li> </ol> <p>Comments: Adopts [1] through [6], as well as [11] (Comment [7] in State Rules) and [12] (Comment [8] in State Rules).</p>
<p>CT Effective 1/1/07</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p> <p>Comments:</p>

	<p>Adopts [1] through [6], as well as [11] (Comment [7] in State Rules) and [12] (Comment [8] in State Rules).</p>
<p>District of Columbia Effective 2/1/07</p>	<p>Title: State Rules changes “Imputation of Conflicts of Interest” to “Imputed Disqualification”</p> <p>(a)(1) Adds “of the individual lawyer’s representation” after “the prohibition;” deletes “personal” before “interest;” deletes “disqualified” before “lawyer;” adds “described in Rule 1.7(b)(4)” after “disqualified lawyer;” changes “and does not” to “and that interest;” changes “materially limiting” to “adversely affecting”</p> <p>(2) Deletes paragraph and replaces with new Paragraph (2): “the representation is permitted by Rules 1.11, 1.12, or 1.18”</p> <p>(b) Model Rules (b) becomes D.C. Rules (c); D.C. Rules adds new Paragraph (b): “When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in a matter which is the same as, or substantially related to, a matter with respect to which the lawyer had previously represented a client whose interests are materially adverse to that person and about whom the lawyer has in fact acquired information protected by Rule 1.6 that is material to the matter. The firm is not disqualified if the lawyer participated in a previous representation or acquired information under the circumstances covered by Rule 1.6(h) or Rule 1.18.”</p> <p>D.C. Rules (c) is identical to MR (b) D.C. Rules (d) is identical to MR (c) D.C. Rules (e) is identical to MR (d)</p> <p>Comments: D.C. Rules [1], [2] and [3] replaces MR Comment [1]: <b>Definition of “Firm”</b> [1] Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. <i>See</i> Rule 1.0(c). For purposes of this rule, the term “firm” includes lawyers in a private firm and lawyers employed in the legal department of a corporation, legal services organization, or other organization, but does not include a government agency or other government entity. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.</p>

	<p>[2] There is ordinarily no question that the members of the law department of an organization constitute a firm within the meaning of the Rules of Professional Conduct, but there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.</p> <p>[3] Similar questions can also arise with respect to lawyers in legal aid organizations. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular Rule that is involved, and on the specific facts of the situation.</p> <p>[4] is identical to MR Comment [2]</p> <p>[5] is equivalent to MR Comment [12], with a few changes: Changes “determines” to “governs;” deletes “associated” and changes clause “with the...lawyer” to “with which that firm is associated.”</p> <p>[6] is equivalent to MR Comment [11]: changes “imputation” to “situation” and deletes everything after “Rule 1.11.”</p> <p>Adds Comment [7]:</p> <p>[7] Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer from the government to a private firm. The government is entitled to protection of its client confidences, and therefore to the protections provided in Rules 1.6 and 1.11. Nevertheless, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government’s recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11.</p> <p>[8] equivalent to MR Comment [3], with the added title, “Exception for Personal Interest of the Disqualifying Lawyer;” replaces “strong political beliefs” with “an interest described in Rule 1.7(b)(4);” deletes everything after “the firm should not be disqualified” and replaces with:</p> <p>“For example, a lawyer’s strong political beliefs may disqualify the lawyer from representing a client, but the firm should not be disqualified if the lawyer’s beliefs will not adversely affect the representation by others in the firm. Similarly, representation of a client by the firm would not be precluded merely because the client’s adversary is a person with whom one of the firm’s lawyers has Longstanding personal or social ties or is represented by a lawyer in another firm who is closely related to one of the firm’s lawyers. <i>See</i> Rule 1.7, Comment [12] and Rule 1.8(h), Comment [7],</p>
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	<p>respectively. Nor would representation by the firm be precluded merely because one of its lawyers is seeking possible employment with an opponent (<i>e.g.</i>, U.S. Attorney’s Office) or with a law firm representing the opponent of a firm client.”</p> <p>D.C. Rules adds Comments [9], [10], [11]:</p> <p>[9] When lawyers move between firms or when lawyers have been associated in a firm but then end their association, the fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association, or unreasonably hamper the former firm from representing a client with interests adverse to those of a former client who was represented by a lawyer who has terminated an association with the firm. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.</p> <p>[10] Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek <i>per se</i> rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.</p> <p>[11] The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the Code of Professional Responsibility. Applying this rubric presents two problems. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since “impropriety” is undefined, the term “appearance of impropriety” is question-begging. It therefore has to be recognized that the problem of</p>
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	<p>imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.</p> <p>[12] A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.</p> <p>D.C. Rules adds Section, “Confidentiality,” which includes Comments [13], [14], [15], and [16]:</p> <p>[13] Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm’s clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.</p> <p>[14] Application of paragraphs (b) and (c) depends on a situation’s particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.</p> <p>[15] The provisions of paragraphs (b) and (c) which refer to possession of protected information operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rule 1.6. Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a substantially related matter even though the interests of the two clients conflict.</p> <p>[16] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. <i>See</i> Rule 1.6.</p> <p>D.C. Rules adds Section, “Adverse Positions:”</p> <p>[17] The second aspect of loyalty to a client is the lawyer’s obligation to decline subsequent representations involving positions adverse to a former client arising in the same or substantially related matters. This obligation requires abstention from adverse representations by the individual lawyer involved, and may also entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by the principles of Rule 1.9. Thus, under paragraph (b), if a lawyer left one firm for another, the new affiliation would preclude the lawyer’s new firm from continuing to represent clients with interests materially adverse to those of</p>
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	<p>the lawyer's former clients in the same or substantially related matters. In this respect paragraph (b) is at odds with – and thus must be understood to reject – the dicta expressed in the “second” hypothetical in the second paragraph of footnote 5 of <i>Brown v. District of Columbia Board of Zoning Adjustment</i>, 486 A.2d 37, 42 n. 5 (D.C. 1984) (en banc), premised on <i>LaSalle National Bank v. County of Lake</i>, 703 F.2d 252, 257-59 (7th Cir. 1983).</p> <p>[18] The concept of “former client” as used in paragraph (b) extends only to actual representation of the client by the newly affiliated lawyer while that lawyer was employed by the former firm. Thus, not all of the clients of the former firm during the newly affiliated lawyer's practice there are necessarily deemed former clients of the newly affiliated lawyer. Only those clients with whom the newly affiliated lawyer in fact personally had a lawyer-client relationship are former clients within the terms of paragraph (b).</p> <p>[19] The last sentence of paragraph (b) limits the imputation rule in certain limited circumstances. Those circumstances involve situations in which any secrets or confidences obtained were received before the lawyer had become a member of the Bar, but during a time when such person was providing assistance to another lawyer. The typical situation is that of the part-time or summer law clerk, or so-called summer associate. Other types of assistance to a lawyer, such as working as a paralegal or legal assistant, could also fall within the scope of this sentence. The limitation on the imputation rule is similar to the provision dealing with judicial law clerks under Rule 1.11(b). Not applying the imputation rule reflects a policy choice that imputation in such circumstances could unduly impair the mobility of persons employed in such nonlawyer positions once they become members of the Bar. The personal disqualification of the former non-lawyer is not affected, and the lawyer who previously held the non-legal job may not be involved in any representation with respect to which the firm would have been disqualified but for the last sentence of paragraph (b). Rule 1.6(h) provides that the former nonlawyer is subject to the requirements of Rule 1.6 (regarding protection of client confidences and secrets) just as if the person had been a member of the Bar when employed in the prior position.</p> <p>Comment [20] is equivalent to MR Comment [5], which a few stylistic changes. D.C. Rules changes “permits” to “operates to permit;” moves “under certain circumstances” to beginning of paragraph. D.C. Rules changes “Rule 1.10(b)” to “paragraph (c).” In third sentence, moves “however” to after “firm.” Changes “Rules 1.6 and 1.9(c)” to “Rule 1.6”</p> <p>D.C. Rules adds Section, “Lawyers Assisting the Office of the Attorney General of the District of Columbia:”</p> <p>[21] The Office of the Attorney General of the District of Columbia may experience periods of peak need for legal services which cannot be met by normal hiring programs, or may experience problems in dealing with a</p>
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	<p>large backlog of matters requiring legal services. In such circumstances, the public interest is served by permitting private firms to provide the services of lawyers affiliated with such private firms on a temporary basis to assist the Office of the Attorney General. Such arrangements do not fit within the classical pattern of situations involving the general imputation rule of paragraph (a). Provided that safeguards are in place which preclude the improper disclosure of client confidences or secrets, and the improper use of one client's confidences or secrets on behalf of another client, the public interest benefits of such arrangements justify an exception to the general imputation rule, just as Comment [1] excludes from the definition of "firm" lawyers employed by a government agency or other government entity. Lawyers assigned to assist the Office of the Attorney General pursuant to such temporary programs are, by virtue of paragraph (e), treated as if they were employed as government employees and as if their affiliation with the private firm did not exist during the period of temporary service with the Office of the Attorney General. <i>See</i> Rule 1.11(h) with respect to the procedures to be followed by lawyers participating in such temporary programs and by the firms with which such lawyers are affiliated after the participating lawyers have ended their participation in such temporary programs.</p> <p>[22] The term "made available to assist the Office of the Attorney General in providing legal services" in paragraph (e) contemplates the temporary cessation of practice with the firm during the period legal services are being made available to the Office of the Attorney General, so that during that period the lawyer's activities which involve the practice of law are devoted fully to assisting the Office of the Attorney General.</p> <p>[23] Rule 1.10(e) prohibits a lawyer who is assisting the Office of the Attorney General from representing that office in any matter in which the lawyer's firm represents an adversary. Rule 1.10(e) does not, however, by its terms, prohibit lawyers assisting the Office of the Attorney General from participating in every matter in which the Attorney General is taking a position adverse to that of a current client of the firm with which the participating lawyer was affiliated prior to joining the program of assistance to the Office of the Attorney General. Such an unequivocal prohibition would be overly broad, difficult to administer in practice, and inconsistent with the purposes of Rule 1.10(e).</p> <p>[24] The absence of such a <i>per se</i> prohibition in Rule 1.10(e) does not diminish the importance of a thoughtful and restrained approach to defining those matters in which it is appropriate for a participating lawyer to be involved. An appearance of impropriety in programs of this kind can undermine the public's acceptance of the program and embarrass the Office of the Attorney General, the participating lawyer, that lawyer's law firm and clients of that firm. For example, it would not be appropriate for a participant lawyer to engage in a representation adverse to a party who is known to be a major client of the participating lawyer's firm, even though the subject matter of the representation of the Office of the Attorney</p>
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	<p>General bears no substantial relationship to any representation of that party by the participating lawyer’s firm. Similarly, it would be inappropriate for a participating lawyer to be involved in a representation adverse to a party that the participating lawyer has been personally involved in representing while at the firm, even if the client is not a major client of the firm. The appropriate test is that of conservative good judgment; if any reasonable doubts concerning the unrestrained vigor of the participating lawyer’s representation on behalf of the Office of the Attorney General might be created, the lawyer should advise the appropriate officials of the Office of the Attorney General and decline to participate. Similarly, if participation on behalf of the Office of the Attorney General might reasonably give rise to a concern on the part of a participating lawyer’s firm or a client of the firm that its secrets or confidences (as defined by Rule 1.6) might be compromised, participation should be declined. It is not anticipated that situations suggesting the appropriateness of a refusal to participate will occur so frequently as to significantly impair the usefulness of the program of participation by lawyers from private firms.</p> <p>[25] The primary responsibility for identifying situations in which representation by the participating lawyer might raise reasonable doubts as to the lawyer’s zealous representation on behalf of the Office of the Attorney General must rest on the participating lawyer, who will generally be privy to nonpublic information bearing on the appropriateness of the lawyer’s participation in a matter on behalf of the Office of the Attorney General. Recognizing that many representations by law firms are nonpublic matters, the existence and nature of which may not be disclosed consistent with Rule 1.6, it is not anticipated that law firms from which participating lawyers have been drawn would be asked to perform formal “conflicts checks” with respect to matters in which participating lawyers may be involved. However, consultations between participating lawyers and their law firms to identify potential areas of concern, provided that such consultations honor the requirements of Rule 1.6, are appropriate to protect the interests of all involved – the Office of the Attorney General, the participating lawyer, that lawyer’s law firm and any clients whose interests are potentially implicated.</p> <p>D.C. Rules does not adopt Comments [1], [4], and [6] through [10].</p>
<p>DE Effective 7/1/03</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). (a): adds at the beginning: "Except as otherwise provided in this rule, .... adds new (c) to provide for screening - identical to E2k's proposal: (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a client in a matter in which that lawyer is disqualified under Rule 1.9 unless: (1) the personally disqualified lawyer is timely screened form any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is promptly given to the affected former client." MR (c) and (d) renumbered to (d) and (e).</p>

	<p>Comments:  DE Rules adds Comments [6], [7] and [8]:</p> <p>[6] Where the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation.</p> <p>[7] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c)(2) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.</p> <p>[8] Notice, including a description of the screened lawyer’s prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.</p> <p>DE Rules [9] is identical to MR Comment [6]  [10] is identical to MR Comment [11]  [11] is identical to MR Comment [12]</p> <p>DE Rules does not adopt MR Comments [7], [8], [9], [10].</p>
<p>FL  Effective  3/22/06</p>	<p>(a) Florida Rules adds title, “Imputed Disqualification of All Lawyers in Firm;” deletes “unless” and all sections following. Rules are changed to “4-1.7, 4-1.8(c), 4-1.9, or 4-2.2.”</p> <p>Adds: (b) Former Clients of Newly Associated Lawyer. When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by rules 4-1.6 and 4-1.9(b) that is material to the matter.</p> <p>(c): same as MR (b) but adds title, “Representing Interests Adverse to Clients of Formerly Associated Lawyer”</p> <p>(c)(1): same as MR (b)(1)</p> <p>(c)(2): same as MR (b)(2) but changes cross-reference to 1.9(b)</p> <p>(d): same as MR (c) but adds “Waiver of Conflict.” to beginning.</p> <p>Comments:  First part of Comment [1], up to “on the specific fact,” is similar to MR Comment [1], but with changes in wording: Replaces “denotes” with “includes” and replaces clause, “in a law partnership...or other organization,” with “employed in the legal department of a corporation or other organization or in a legal services organization;” deletes “See Rule 1.0...[4]” and adds to end of paragraph:  For example, 2 practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal</p>

	<p>agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.</p> <p>Adds new Comments [2] through [5]:</p> <p>[2] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.</p> <p>[3] Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved and on the specific facts of the situation.</p> <p>[4] Where a lawyer has joined a private firm after having represented the government, the situation is governed by rule 4-1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by rule 4-1.11(c)(1). The individual lawyer involved is bound by the rules generally, including rules 4-1.6, 4-1.7, and 4-1.9.</p> <p>[5] Different provisions are thus made for movement of a lawyer from 1 private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in rules 4-1.6, 4-1.9, and 4-1.11. However, if the more extensive disqualification in rule 4-1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if rule 4-1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in rule 4-1.11.</p> <p>Comment [6] is almost identical to MR [2], but references different Rules. FL Rules does not adopt Comments [3] through [12]</p> <p>FL Rules adds new Sections, "Lawyers moving between firms:"</p> <p>[7] When lawyers have been associated in a <a href="#">firm</a> but then end their association, however, the problem is more complicated. The fiction that the</p>
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	<p>law firm is the same as a single <a href="#">lawyer</a> is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be <a href="#">reasonably</a> assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to 1 field or another, and that many move from 1 association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from 1 practice setting to another and of the opportunity of clients to change counsel.</p> <p>[8] Reconciliation of these competing principles in the past has been attempted under 2 rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a <a href="#">partner</a> in a <a href="#">law firm</a> is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a <a href="#">lawyer</a> has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences <a href="#">known</a> by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.</p> <p>[9] The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety and was proscribed in former Canon 9 of the Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a <a href="#">lawyer</a> practicing alone or by the very general concept of appearance of impropriety.</p> <p>[10] A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.</p> <p>FL Rules adds Section, "Confidentiality"</p> <p>[11] Preserving confidentiality is a question of access to information.</p>
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	<p>Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not information about other clients.</p> <p>[12] Application of subdivisions (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.</p> <p>[13] Subdivisions (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by rules 4-1.6 and 4-1.9(b). Thus, if a lawyer while with 1 firm acquired no knowledge or information relating to a particular client of the firm and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the 2 clients conflict.</p> <p>[14] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See rules 4-1.6 and 4-1.9.</p> <p>FL Rules adds Section, "Adverse positions:"</p> <p>[15] The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by rule 4-1.9(a). Thus, if a lawyer left 1 firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters so long as the conditions of rule 4-1.10(b) and (c) concerning confidentiality have been met.</p>
<p>GA Effective 1/1/01</p>	<p>Rule title: "Imputed Disqualification: General Rule"</p> <p>(a) GA Rules replaces rules at end of sentence with: "Rules 1.7: Conflict of Interest: General Rule, 1.8(c): Conflict of Interest: Prohibited Transactions, 1.9: Former Client or 2.2: Intermediary;" deletes "unless" and all sections thereafter.</p> <p>(b) Replaces cited rules with "Rules 1.6: Confidentiality of Information and 1.9(c): Conflict of Interest: Former Client"</p> <p>(c) Adds "Conflict of Interest: General Rule" After "Rule 1.7."</p> <p>Adds stand-alone sentence at end of rule: "The maximum penalty for a violation of this Rule is disbarment."</p>

	<p>Comments:</p> <p>[1] Replaces “denotes” with “includes;” replaces clause, “law partnership, professional corporation, sole proprietorship or other association authorized to practice law,” with “private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization;” deletes “See Rule 1.0(c)” and “See Rule 1.0...[4];” adds to end of paragraph:</p> <p>“For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to the other.”</p> <p>Adds new Comments [2] through [5]:</p> <p>[2] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.</p> <p>[3] Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.</p> <p>[4] Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b): Successive Government and Private Employment; where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1): Successive Government and Private Employment. The individual lawyer involved is bound by the Rules generally, including Rules 1.6: Confidentiality of Information, 1.7: Conflict of Interest: General Rule and 1.9: Conflict of Interest: Former Client.</p>
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	<p>[5] Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in Rules 1.6: Confidentiality of Information, 1.9: Conflict of Interest: Former Client, and 1.11: Successive Government and Private Employment. However, if the more extensive disqualification in Rule 1.10: Imputed Disqualification were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and, thus, has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10: Imputed Disqualification were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11: Successive Government and Private Employment.</p> <p>GA Rules Comment [6] is almost identical to MR Comment [2], but references different Rules.</p> <p>[7] is almost identical to MR Comment [5], but, whenever referencing a Rule, includes the full name of the Rule.</p> <p>Does not adopt Comments [3], [4], and [6] through [12].</p>
<p>HI Effective 1/1/09</p>	<p>(a) HI Rules adds “or 2.2” at end of paragraph; deletes “unless” and all sections thereafter.</p> <p>(c) Adds “firm” before “disqualification;” deletes “under the condition...Rule 1.7” and replaces with “by consent after consultation.”</p> <p>Deletes (d) and replaces with:</p> <p style="padding-left: 40px;">“(d) The disqualifications of Rules 1.7, 1.9(a), 1.9(b), or 1.11(c)(1) shall not be imputed to government lawyers provided the disqualified government lawyer has been screened from participation in the matter.”</p> <p>Comments:</p> <p>HI Rules Comment [1] is similar to MR [1], but replaces “denotes” with “includes” and replaces clause, “in a law partnership...other organization” with “in the legal department of a corporation or other organization, or in a legal services organization;” deletes “See Rule 1.0(c)” and “See Rule 1.0...[4];” adds to end of paragraph:</p> <p style="padding-left: 40px;">For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to the other.</p>

<p>ID Effective 5/4/10</p>	<p>Identical to MR</p>
<p>IL Effective 1/1/2010</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). (d) Adds at the end, “and with former judges, arbitrators, mediators or other third-party neutrals is governed by Rule 1.12;” Adds (e): “When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.”</p> <p>Comments: [1] Identical [2] Almost identical, but deletes reference to Rule 1.10(a)(2) Adopts Comments [3] through [6] IL Comment [7] is similar to MR [11], but adds at the end of the paragraph:     Where a lawyer has joined a private firm after having been a judge or other adjudicative officer or law clerk to such person or an arbitrator, mediator or other third-party neutral, imputation is governed by Rule 1.12, not this Rule. IL Comment [8] is identical to MR [12] IL Rules adds as Comment [9]:     Where the conditions of paragraph (e) are met, imputation is removed and consent is not required. Requirements for screening procedures are stated in Rule 1.0(k). This paragraph does not prohibit a lawyer from receiving a salary or partnership share established by independent agreement, but that lawyer may not receive compensation directly relating the lawyer’s compensation to the fee in the matter in which the lawyer is disqualified. Nonconsensual screening in such cases adequately balances the interests of the former client in protecting its confidential information, the interests of the current client in hiring the counsel of its choice (including a law firm that may have represented the client in similar matters for many years), and the interests of lawyers in career mobility, particularly when they are moving involuntarily.</p> <p>Does not adopt MR Comments [7] through [10].</p>
<p>IN Effective 1/1/05</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). (a): adds reference to Rule 2.2 adds as (c): When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless: (1) the personally disqualified lawyer did not have primary responsibility for the matter that causes the disqualification under Rule 1.9; (2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and</p>

	<p>(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this rule.</p> <p>Comments:                  [2] almost identical to MR [2], but references different Rules.                  IN Rules Comment [3] identical to first sentence of MR [3]                  IN Rules adds as Comment [6]:                      [6] Where the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation. Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c)(2) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified. Notice, including a description of the screened lawyer’s prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.                  IN Rules Comment [7] almost identical to MR [6], but for the reference, at the beginning of the paragraph, to Rule 1.10(d), instead of Rule 1.10(c).                  Comments [8] and [9] are identical to MR Comments [11] and [12].</p> <p>Does not adopt Comments [7] through [10]</p>
<p>IA Effective 7/1/05</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p> <p>Comments:                  Adopts MR [1] through [6]                  [2] is almost identical to MR [2], but deletes reference to 1.10(a)(2)                  IA Comments [7] and [8] are identical to MR [11] and [12].                  Does not adopt MR Comments [7] through [10].</p>
<p>KS Effective 7/1/07</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p> <p>Comments:                  [2] is almost identical to MR, but deletes reference to 1.10(a)(2)                  [4] and [5] are identical to MR [5] and [6]                  Comments [6] and [7] are identical to MR Comments [11] and [12].                  Does not adopt Comments [3], [4], and [7] through [10].</p>
<p>KY Effective 7/15/09</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).                  Adds new (d):                      “(d) A firm is not disqualified from representation of a client if the only basis for disqualification is representation of a former client by a lawyer presently associated with the firm, sufficient to cause that lawyer to be disqualified pursuant to Rule 1.9 and:                  (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no specific part of the fee therefrom; and</p>

	<p>(2) written notice is given to the former client.”  Kentucky Rules (e) is identical to MR (d).</p> <p>Comments:  Adopts MR [1] through [6]  [2] is almost identical to MR, but refers to Paragraph (a) instead of (a)(1) and deletes reference to 1.10(a)(2)  [5] is almost identical to MR, but refers to Rule 1.9, instead of Rule 1.9(c)  Adds as [7]:  Rule 1.10(d) removes the imputation in some cases when the disqualified lawyer is screened. See Rule 1.0 (k) and Comments [8] – [10] for minimum requirements of screening.  [8] and [9] are identical to MR [11] and [12]  Does not adopt [7] through [10]</p>
<p>LA  Effective  3/1/04</p> <p>As of  November  2009, the  LSBA  Rules of  Professional  Conduct  Committee  is seeking  comments  on this Rule</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).  Does not adopt Comments.</p>
<p>ME  Effective  8/1/09</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).  (d) Adds to beginning of paragraph, “For purposes of Rule 1.10 only, “firm” does not include government agencies.”</p> <p>Comments:  [1] Adds to end of paragraph:  “The term “firm” as used in Rule 1.10, however, does not include governmental entities.”  [2] is almost identical to MR, but refers to Paragraph (a) instead of (a)(1) and deletes reference to 1.10(a)(2)  [6] similar to MR, but inserts clause after second sentence:  “A client’s consent may be conditional: for example, the client’s consent to waiver of imputation may be conditioned on the law firm screening to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. See Rule 1.0(k) “Screened” and Comments 8, 9 and 10.”  Comments [7] and [8] are identical to MR [11] and [12].</p>

<p>MD Effective 7/1/05</p>	<p>Does not adopt [7] through [10]</p> <p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). Adds as (c): “When a lawyer becomes associated with a firm, no lawyer associated in the 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 participation in the matter and is apportioned no part of the fee therefrom.”</p> <p>Comments: [1] Replaces first sentence and “See Rule 1.0(c)” with, “A “firm” is defined in Rule 1.0(d)” and adds to end of paragraph: “A lawyer is deemed associated with a firm if held out to be a partner, principal, associate, of counsel, or similar designation. A lawyer ordinarily is not deemed associated with a firm if the lawyer no longer practices law and is held out as retired or emeritus. A lawyer employed for short periods as a contract attorney ordinarily is deemed associated with the firm only regarding matters to which the lawyer gives substantive attention.” [2] is almost identical to MR, but refers to Paragraph (a) instead of (a)(1), deletes reference to 1.10(a)(2) and adds reference to 1.10(c). [4] Refers to Rule 1.0(m) instead of 1.0(k) Adds as [6]: Where the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation. Adds screening procedure in new [7]: Requirements for screening procedures are stated in Rule 1.0(m). Paragraph (c) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified. [8] is almost identical to MR [6], but refers to 1.10(d) instead of (c), and, at the end of the paragraph, 1.0(f) instead of (e). [9] is identical to MR [11] [10] is identical MR [12], but changes reference to paragraph (j) instead of (k). Does not adopt [7] to [10]</p>
<p>MA As amended effective 9/1/08</p>	<p>Changes title to: “Imputed Disqualification: General Rule” (a) Adds reference to Rule 1.8(c) and replaces language after “unless” with: “A lawyer employed by the Public Counsel Division of the Committee for Public Counsel Services and a lawyer assigned to represent clients by the Private Counsel Division of that Committee are not considered to be associated. Lawyers are not considered to be associated merely because they have each individually been assigned to represent clients by the Committee for Public Counsel Services through its Private Counsel Division.” Does not adopt MR (d)</p>

	<p>Adds as (d) and (e):</p> <p>(d) When a lawyer becomes associated with a firm, the firm may not undertake to or continue to represent a person in a matter that the firm knows or reasonably should know is the same or substantially related to a matter in which the newly associated lawyer (the "personally disqualified lawyer"), or a firm with which that lawyer was associated, had previously represented a client whose interests are materially adverse to that person unless:</p> <ol style="list-style-type: none"><li>(1) the personally disqualified lawyer has no information protected by Rule 1.6 or Rule 1.9 that is material to the matter ("material information"); or</li><li>(2) the personally disqualified lawyer (i) had neither substantial involvement nor substantial material information relating to the matter and (ii) is screened from any participation in the matter in accordance with paragraph (e) of this Rule and is apportioned no part of the fee therefrom.</li></ol> <p>(e) For the purposes of paragraph (d) of this Rule and of Rules 1.11 and 1.12, a personally disqualified lawyer in a firm will be deemed to have been screened from any participation in a matter if:</p> <ol style="list-style-type: none"><li>(1) all material information which the personally disqualified lawyer has been isolated from the firm;</li><li>(2) the personally disqualified lawyer has been isolated from all contact with the client relating to the matter, and any witness for or against the client;</li><li>(3) the personally disqualified lawyer and the firm have been precluded from discussing the matter with each other;</li><li>(4) the former client of the personally disqualified lawyer or of the firm with which the personally disqualified lawyer was associated receives notice of the conflict and an affidavit of the personally disqualified lawyer and the firm describing the procedures being used effectively to screen the personally disqualified lawyer, and attesting that (i) the personally disqualified lawyer will not participate in the matter and will not discuss the matter or the representation with any other lawyer or employee of his or her current firm, (ii) no material information was transmitted by the personally disqualified lawyer before implementation of the screening procedures and notice to the former client; and (iii) during the period of the lawyer's personal disqualification those lawyers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter; and</li><li>(5) the personally disqualified lawyer and the firm with which he is associated reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.</li></ol>
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	<p>In any matter in which the former client and the person being represented by the firm with which the personally disqualified lawyer is associated are not before a tribunal, the firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening procedures used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.</p> <p>Comments:</p> <p>[1] Replaces “denotes” with “includes” and replaces clause, “in a law partnership...or other organization” with “in a private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization;” deletes all references to rules and adds to end of paragraph:</p> <p style="padding-left: 40px;">For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to the other.</p> <p>Adds as [2]:</p> <p style="padding-left: 40px;">With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.</p> <p>Adds as [3]:</p> <p style="padding-left: 40px;">Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.</p> <p>[4] is equivalent to MR [11], but changes wording to:</p> <p style="padding-left: 40px;">Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11 (a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is</p>
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	<p>bound by the Rules generally, including Rules 1.6, 1.7 and 1.9.</p> <p>Adds as [5]: “Reserved.”</p> <p>[6] is almost identical to MR [2], but references Paragraph (a)(1) in second-to-last sentence instead of (a); deletes reference to 1.10(a)(2) and adds reference to 1.10(d) and (e).</p> <p>[5] is identical to MR [7]</p> <p>Adds as [8]:</p> <p>Paragraphs (d) and (e) of Rule 1.10 are new. They apply when a lawyer moves from a private firm to another firm and are intended to create procedures similar in some cases to those under Rule 1.11(b) for lawyers moving from a government agency to a private firm. Paragraphs (d) and (e) of Rule 1.10, unlike the provisions of Rule 1.11, do not permit a firm, without the consent of the former client of the disqualified lawyer or of the disqualified lawyer's firm, to handle a matter with respect to which the disqualified lawyer was personally and substantially involved, or had substantial material information, as noted in Comment 11 below. Like Rule 1.11, however, Rule 1.10(d) can only apply if the lawyer no longer represents the client of the former firm after the lawyer arrives at the lawyer's new firm.</p> <p>Adds as [9]:</p> <p>[9] If the lawyer has no confidential information about the representation of the former client, the new firm is not disqualified and no screening procedures are required. This would ordinarily be the case if the lawyer did no work on the matter and the matter was not the subject of discussion with the lawyer generally, for example at firm or working group meetings. The lawyer must search his or her files and recollections carefully to determine whether he or she has confidential information. The fact that the lawyer does not immediately remember any details of the former client's representation does not mean that he or she does not in fact possess confidential information material to the matter.</p> <p>Adds as [10]:</p> <p>[10] If the lawyer does have material information about the representation of the client of his former firm, the firm with which he or she is associated may represent a client with interests adverse to the former client of the newly associated lawyer only if the personally disqualified lawyer had no substantial involvement with the matter or substantial material information about the matter, the personally disqualified lawyer is apportioned no part of the fee, and all of the screening procedures are followed, including the requirement that the personally disqualified lawyer and the new firm reasonably believe that the screening procedures will be effective. For example, in a very small firm, it may be difficult to keep information screened. On the other hand, screening procedures are more likely to be successful if the personally disqualified lawyer practices in a different office of the firm from those handling the matter from which the personally disqualified lawyer is screened.</p> <p>Adds as [11]:</p>
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	<p>In situations where the personally disqualified lawyer was substantially involved in a matter, or had substantial material information, the new firm will generally only be allowed to handle the matter if the former client of the personally disqualified lawyer or of the law firm consents and the firm reasonably believes that the representation will not be adversely affected, all as required by Rule 1.7. This differs from the provisions of Rule 1.11, in that Rule 1.11(a) permits a firm to handle a matter against a government agency, without the consent of the agency, with respect to which one of its associated lawyers was personally and substantially involved for that agency, provided that the procedures of Rule 1.11(a)(1) and (2) are followed. Likewise, Rule 1.11(b) permits a firm to handle a matter against a government agency, without the consent of the agency, with respect to which one of its associated lawyers had substantial material information even if that lawyer was not personally and substantially involved for that agency, provided that the lawyer is screened and not apportioned any part of the fee.</p> <p>Adds as [12]:</p> <p>The former client is entitled to review of the screening procedures if the former client believes that the procedures will not be or have not been effective. If the matter involves litigation, the court before which the litigation is pending would be able to decide motions to disqualify or to enter appropriate orders relating to the screening, taking cognizance of whether the former client is seeking the disqualification of the firm upon a reasonable basis or without a reasonable basis for tactical advantage or otherwise. If the matter does not involve litigation, the former client can seek judicial review of the screening procedures from a trial court.</p> <p>Does not adopt [3] through [6], [8] through [10], or [12].</p>
<p>MI Effective 10/1/88</p>	<p><i>*Made only partial amendments effective 1/1/2011 since the most recent amendments to the ABA Model Rules (amended Rules 3.1, 3.3, 3.4, 3.5, 3.6, 5.5, and 8.5 and adopted new Rules 2.4, 5.7, and 6.6.</i></p> <p>Adds reference to Rule 2.2; deletes “unless” and all sections thereafter; adds to end of paragraph: “If a lawyer leaves a firm and becomes associated with another firm, MRPC 1.10(b) governs whether the new firm is imputedly disqualified because of the newly hired lawyer’s prior services in or association with the lawyer’s former law firm.”</p> <p>Adds as (b):</p> <p>(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, is disqualified under Rule 1.9(b), unless: (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and</p> <p>(2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.</p> <p>ME Rules (c) is identical to MR (b)</p>

	<p>ME Rules (d) is identical to MR (c) Deletes MR (d).</p> <p>Comments: (Comments are numbered in MI Rules)</p> <p><b><i>Definition of “Firm”</i></b> First paragraph is similar to MR Comment [1] but replaces “denotes” with “includes” and replaces clause, “in a law partnership...or other organization” with “in a private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization;” deletes all references to rules and adds to end of paragraph:</p> <p style="padding-left: 40px;">For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.</p> <p>Adds to section, “Definition of ‘Firm’”:</p> <p style="padding-left: 40px;">With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates. Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as being associated with each other can depend on the particular rule that is involved and on the specific facts of the situation.</p> <p style="padding-left: 40px;">Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is bound by the rules generally, including Rules 1.6, 1.7, and 1.9.</p> <p><b><i>Principles of Disputed Disqualification</i></b> First paragraph is almost identical to MR [2], but references Paragraph (a) instead</p>
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	<p>of (a)(1) in second-to-last sentence and deletes reference to 1.10(a)(2)                  Second paragraph is identical to MR [3], but adds to end: “unless this rule’s provisions are followed.”</p> <p>Adds new Section: <b><i>Staff Comment to 2006 Amendment</i></b>                  This amendment clarifies that when an attorney associates with a new firm, the attorney’s disqualification does not necessarily disqualify the attorney’s new firm by imputed disqualification, if the new firm imposes timely and appropriate screening under MRPC 1.10(b). The amendment clarifies that MRPC 1.10(b) governs the issue of imputed disqualification following the transfer of an attorney to a new firm, which was the intent of the rule and has been the practice since the rule was adopted in 1988 and further amendments were adopted in 1990. This proposal was prompted by the decision issued in Nat’l Union Fire Ins Co v Alticor, Inc, ___ F3d ___; 2006 WL 2956522 (CA 6, 2006).</p> <p>Does not adopt MR Comments [3] through [12].</p>
<p>MN                  Effective                  10/1/05</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).                  Inserts as (b):                  (b) When a lawyer becomes associated with a firm, and the lawyer is prohibited from representing a client pursuant to Rule 1.9(b), other lawyers in the firm may represent that client if there is no reasonably apparent risk that confidential information of the previously represented client will be used with material adverse effect on that client because:                  (1) any confidential information communicated to the lawyer is unlikely to be significant in the subsequent matter;                  (2) the lawyer is subject to screening measures adequate to prevent disclosure of the confidential information and to prevent involvement by that lawyer in the representation; and                  (3) timely and adequate notice of the screening has been provided to all affected clients.</p> <p>MN Rules (c) is identical for MR (d)                  MN Rules (d) is identical for MR (e)</p> <p>Comments:                  [1] is almost identical to MR Comment [1], except that MN Comments makes reference to Rule 1.0(d) instead of (c).                  [2] is almost identical to MR [2], except that MN makes reference to Paragraph (a) instead of (a)(1)                  [4] is almost identical to MR [4], but MN makes reference to Rule 1.0(l) instead of (k)                  [6] is almost identical to MR [6], but MN Comment makes reference in first sentence to 1.10(d) instead of (c) and 1.0(f) at the end, instead of 1.0(e).                  [7] and [8] are identical to MR Comments [11] and [12].                  Does not adopt MR Comments [7] through [10].</p>
<p>MS                  Effective</p>	<p>(a) MS Rules adds reference to Rule 2.4; deletes “unless” and all sections thereafter.</p>

11/3/05	<p>Inserts as (b):</p> <p>When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.</p> <p>(c): same as MR (b) but deletes “and not currently represented by the firm”</p> <p>(c)(1) and (2): same as MR (b)(1) and (2)</p> <p>(d): same as MR (c)</p> <p>Did not adopt MR (d)</p> <p>Comments:</p> <p>Section, “<b>Definition of ‘Firm’</b>”</p> <p>First paragraph is similar to MR Comment [1] but replaces “denotes” with “includes” and replaces clause, “in a law partnership...or other organization” with “in a private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization;” deletes all references to rules and adds to end of paragraph:</p> <p>For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.</p> <p>Adds to section:</p> <p>With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether a law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.</p> <p>Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that</p>
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	<p>is involved, and on the specific facts of the situation.</p> <p>Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7, and 1.9.</p> <p>Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences, and therefore to the protections provided in Rules 1.6, 1.9, and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11.</p> <p><b><i>Principles of Imputed Disqualification</i></b> Paragraph is almost identical to MR Comment [2], but changes "Paragraph (a)(1)" to "Paragraph (a)" and replaces reference to rules at end with "paragraphs (b) and (c);"</p> <p>Adds new Section: <b><i>Lawyers Moving Between Firms</i></b> When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and the opportunity of clients to change counsel.</p> <p>Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all</p>
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	<p>clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.</p> <p>The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety. A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.</p> <p>Adds Section: <b><i>Confidentiality</i></b></p> <p>Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.</p> <p>Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought. Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of</p>
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	<p>the two clients conflict. Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9.</p> <p>Adds Section: <b>Adverse Positions.</b> The second aspect of loyalty to a client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by Rule 1.9(a). Thus, if a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters, so long as the conditions of Rule 1.10(b) and (c) concerning confidentiality have been met.</p> <p>Does not adopt [3] through [12].</p>
MO Effective 7/1/07	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p> <p>Does not adopt Comments.</p>
MT Effective 4/1/04	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). Adds as (c): (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless: (1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.</p> <p>MT Rules (d) identical to MR (c) MT Rules (e) identical to MR (d)</p> <p>Does not adopt Comments</p>
NE Effective 9/1/05	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p> <p>Comments: [2] Refers to "Paragraph (a)" instead of (a)(1) in second to last sentence, and deletes reference to Rule 1.10(a)(2) [4] Adds, after "law student:" "See Rule 1.9(d) through (f)" NE Rules Comments [7] and [8] are identical to MR [11] Does not adopt [7] through [10]</p>
NV Effective 5/1/06	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). Did not adopt (d). Adds: (e) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is</p>

	<p>disqualified under Rule 1.9 unless:  (1) The personally disqualified lawyer did not have a substantial role in or primary responsibility for the matter that causes the disqualification under Rule 1.9;  (2) The personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and  (3) Written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.</p> <p>Does not adopt Comments</p>
NH Effective 1/1/08	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).  Did not adopt (d).</p> <p>Comments:  [2] Refers to “Paragraph (a)” instead of (a)(1) in second to last sentence, and deletes reference to Rule 1.10(a)(2)  NH Rules Comments [7] and [8] are identical to MR [11]  Does not adopt [7] through [10]</p>
NJ Effective 1/1/04	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).  Adds a screening provision as (c). The provision is similar to the E2k November 2000 draft with the difference that (c)(1) provides: “the matter does not involve a proceeding in which the personally disqualified lawyer had a primary role.”  adds as (f): “Any law firm that enters a screening arrangement, as provided by this Rule, shall establish appropriate written procedures to insure that: 1) all attorneys and other personnel in the law firm screen the personally disqualified attorney from any participation in the matter, 2) the screened attorney acknowledge the obligation to remain screened and takes action to insure the same and 3) the screened attorney is apportioned no part of the fee therefrom.”</p> <p>Does not adopt Comments. New Jersey Comments based on outdated version of Rule 1.10:</p> <p><b>Comment to RPC 1.10</b>  The Court has adopted ABA Model Rule 1.10 with two revisions. One, it adopts also paragraph (b) of the Debevoise Committee's recommendation, that paragraph here becoming paragraph (d). Two, the Court adopts the Debevoise Committee's paragraph (c) (rather than the ABA's paragraph (d)), numbering that paragraph here as paragraph (e). Paragraph (e) permits an affected client to waive an imputed disqualification under the conditions stated in RPC 1.7 unless prohibited by law or, as added by the Court, by regulation. The Court in this paragraph has stressed that a public entity is prohibited from waiving an attorney conflict of interest.</p>
NM Effective 11/1/2009	<p>Changed to Rule 16-110;  (a) Renamed “<b>A. Firm association;</b>” Replaces “Rules 1.7 or 1.9” with “Rule 16-107 or 16-109 of the Rules of Professional Conduct;”  (a)(1) Incorporated into section A; Deletes “or” at end of paragraph.  (a)(2) Deleted.  (b) Renamed “<b>B. Terminated associations.</b>”</p>

	<p>(b)(2) Replaces “Rules 1.6 and 1.9(c)” with “Rule 16-106 and Paragraph C of Rule 16-109 of the Rules of Professional Conduct;”</p> <p>(c) Deleted;</p> <p>(d) Deleted;</p> <p>Adds:</p> <p><b>“C. Subsequent firm associations; screening.</b> When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in a matter in which that lawyer is disqualified under Paragraph A or B of Rule 16-109 of the Rules of Professional Conduct unless:</p> <p>(1) the newly associated lawyer has no information protected by Rule 16-106 or 16-109 of the Rules of Professional Conduct that is material to the matter; or</p> <p>(2) the newly associated lawyer did not have a substantial role in the matter, is timely screened from any participation in the matter and is apportioned no part of the fee therefrom, and written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this rule.</p> <p><b>D. Waiver of disqualification.</b> A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 16- 107 of the Rules of Professional Conduct.</p> <p><b>E. Other rules.</b> The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 16-111 of the Rules of Professional Conduct, and the disqualification of lawyers associated in a firm with former judges, arbitrators, mediators or other third-party neutrals is governed by Rule 16-112 of the Rules of Professional Conduct.”</p> <p>Comments:</p> <p>[1] Deletes reference to Rules; deletes everything after “specific facts” and adds: “For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.”</p> <p>Adds as [2]:</p> <p>[2] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a <a href="#">firm</a> within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not</p>
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	<p>be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.</p> <p>Adds as [3]:</p> <p>[3] Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a <a href="#">firm</a>, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.</p> <p>NM rules Comment [4] is identical to MR Comment [11]</p> <p>Adds as [5]:</p> <p>Different provisions are thus made for movement of a lawyer from one private <a href="#">firm</a> to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences, and therefore to the protections provided in <a href="#">Rules 1.6, 1.9 and 1.11</a>. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in <a href="#">Rule 1.11</a>.</p> <p>Section, <i>Principles of Imputed Disqualification</i> reduced to Paragraph [6], which is identical to MR Comment [2]</p> <p>Adds Section, <i>Lawyers Moving Between Firms</i>:</p> <p>[7] When lawyers have been associated in a <a href="#">firm</a> but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.</p>
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[8] Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a [law firm](#) is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

[9] The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the Maryland Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

[10] A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

Adds Section, ***Confidentiality***

[11] Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a [law firm](#) and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

	<p>[12] Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.</p> <p>[13] Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by <a href="#">Rules 1.6</a> and <a href="#">1.9(b)</a>. Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the <a href="#">firm</a>, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.</p> <p>[14] Independent of the question of disqualification of a <a href="#">firm</a>, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See <a href="#">Rules 1.6</a> and <a href="#">1.9</a>.</p> <p>Adds Section, <i>Adverse Positions</i></p> <p>[15] The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by <a href="#">Rule 1.9(a)</a>. Thus, if a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters, so long as the conditions of <a href="#">Rule 1.10(b)</a> and <a href="#">(c)</a> concerning confidentiality have been met.</p> <p>Does not adopt [2] through [10] or [12].</p>
<p>NY Effective 4/1/09</p>	<p>(a) Adds reference to Rule 1.8; replaces “unless” with “except as otherwise provided therein”</p> <p>(b) Adds “that the firm knows or reasonably should know are” before “materially adverse;” deletes “unless” at end of paragraph, and adds “if the firm or any lawyer remaining in the firm has information protected by Rule 1.6 or 1.9(c) that is material to the matter,” which is identical to the text of (b)(2) except for the addition of “if the firm or.”</p> <p>Adds as (c):</p> <p>“When a lawyer becomes associated with a firm, the firm may not knowingly represent a client in a matter that is the same as or substantially related to a matter in which the newly associated lawyer, or a firm with which that lawyer was associated, formerly represented a client whose interests are materially adverse to the prospective or current client unless the newly associated lawyer did not acquire any information protected by Rule 1.6 or Rule 1.9(c) that is material to the current matter.”</p> <p>Adds as (e):</p> <p>A law firm shall make a written record of its engagements, at or near the time of each new engagement, and shall implement and maintain a system by which</p>

	<p>proposed engagements are checked against current and previous engagements when:</p> <ol style="list-style-type: none"> <li>(1) the firm agrees to represent a new client;</li> <li>(2) the firm agrees to represent an existing client in a new matter;</li> <li>(3) the firm hires or associates with another lawyer; or</li> <li>(4) an additional party is named or appears in a pending matter.</li> </ol> <p>Adds as (f): Substantial failure to keep records or to implement or maintain a conflict-checking system that complies with paragraph (e) shall be a violation thereof regardless of whether there is another violation of these Rules.</p> <p>Adds as (g): Where a violation of paragraph (e) by a law firm is a substantial factor in causing a violation of paragraph (a) by a lawyer, the law firm, as well as the individual lawyer, shall be responsible for the violation of paragraph (a).</p> <p>Adds as (h): A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent in any matter a client whose interests differ from those of another party to the matter who the lawyer knows is represented by the other lawyer unless the client consents to the representation after full disclosure and the lawyer concludes that the lawyer can adequately represent the interests of the client.</p> <p>Does not adopt MR (d).</p> <p>Does not adopt Comments.</p>
<p>NC Effective 3/1/03</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). (a): include a reference to prohibitions under Rule 6.6, Action as a Public Official. (c): include screening as proposed by E2k but delete in (c)(1) the qualification that the lawyer is to receive no portion of the fee. Include the E2k proposed comments on screening without the qualification regarding the fee. Adds this sentence in [7]: However, Rule 8.4(c) prohibits the screened lawyer from participating in the fee if such participation was impliedly or explicitly offered as an inducement to the lawyer to become associated with the firm.</p> <p>Does not adopt Comments</p>
<p>ND Effective 8/1/06</p>	<p>(a) ND Rules references “Rule 1.11, 1.12, 1.18, or 6.5” instead of “Rules 1.7 or 1.9.” Combines (a) with (a)(1); replaces “disqualified” with “prohibited;” Adds clarification to end of paragraph: “For purposes of this paragraph, a personal interest disqualification is one created by a lawyer's interests other than those arising from the representation of other clients or the owing of fiduciary duties to some third party.” Adds as (b): When a lawyer becomes associated with a firm, and the lawyer is prohibited from representing a client pursuant to Rule 1.9, other lawyers in the firm may not thereafter represent the client unless: <ol style="list-style-type: none"> <li>(1) any confidential information communicated to the lawyer is</li> </ol></p>

	<p>unlikely to be significant in the matter; (2) there is no reasonably apparent risk that any use of confidential information of the former client will have a material adverse effect on the client; (3) the lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (4) written notice is promptly given to all affected clients.</p> <p>(c) is comparable to MR (b), with significant changes in wording: When a lawyer has terminated an association with a firm, the firm may not thereafter knowingly represent a person when: (1) the person has interests materially adverse to those of a non-governmental client represented by the formerly associated lawyer; (2) the matter is the same or is substantially related to that in which the formerly associated lawyer represented the client; and (3) any lawyer remaining in the firm has or has had access to material information protected by Rule 1.6.</p> <p>(d), same as MR (c) but changes end: "... affected client's consent after consultation, so long as the representation does not involve the assertion of a claim by one client against another client represented by the same firm in the same litigation or other proceedings before the tribunal." Did not adopt MR (d)</p> <p>Comments: Adds as [1]: Paragraph (d) requires client consent before disqualification under this Rule can be waived. Obtaining the client's consent in writing is the preferred practice. Lack of a writing may make it difficult to prove client consent if a dispute arises later.</p> <p>[2] is identical MR [1] [3] is identical to MR [11] Adds as [4]: Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences, and therefore to the protections provided in Rules 1.6, 1.9, and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11.</p> <p>Reduces Section, <i>Principles of Imputed Disqualification</i>, to Paragraph [5], which is identical to MR [2]</p>
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	<p>Adds Section, <b><i>Personal Interest</i></b></p> <p>A conflict of interest based upon a lawyer's personal interest will not impute to the lawyer's law firm provided the personal interest falls within the definition included in this Rule and to the extent usual concerns justifying imputation are not present. This exception applies only where the prohibited lawyer does not personally represent the client in the matter and no other circumstances suggest the conflict of the prohibited lawyer is likely to influence the work of others in the firm.</p> <p>Adds Section, <b><i>Confidentiality</i></b></p> <p>[7] Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.</p> <p>[8] Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.</p> <p>[9] Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has, or has had access to, material information protected by Rule 1.6. Thus, if a lawyer while with one firm did not have access to material information relating to a particular non-governmental client of the firm and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a substantially related matter even though the interests of the two clients conflict. Situations involving lawyers who represent governmental clients and those involving former judges or other adjudicative officers are covered by Rule 1.11 and Rule 1.12, respectively.</p> <p>[10] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9.</p> <p>Adds Section, <b><i>Adverse Positions</i></b></p> <p>[11] The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in the same or substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not necessarily entail abstention of other lawyers</p>
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	<p>through imputed disqualification. Hence, this aspect of the problem is governed by Rule 1.9(a) and (b). Thus, if a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or substantially related matters, so long as the conditions of Rule 1.10(b) and (c) concerning confidentiality have been met.</p>
<p>OH Effective 2/1/07</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).  (a): deletes “knowingly,” adds “the lawyer knows or reasonably should know that” after “when”  (b) Similar to MR, but changes wording: Replaces clause, “the firm is not prohibited...by the firm, unless” with “no lawyer in that <i>firm</i> shall thereafter represent a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the <i>firm</i>, if the lawyer <i>knows</i> or <i>reasonably should know</i> that either of the following applies:”  (b)(1) Similar to MR, but with change in wording. Paragraph becomes: “(1) the formerly associated lawyer represented the client in the same or a substantially related matter;”  (b)(2) Identical to MR  Adds as (c):  When a lawyer has had substantial responsibility in a matter for a former client and becomes associated with a new firm, no lawyer in the new firm shall knowingly represent, in the same matter, a person whose interests are materially adverse to the interests of the former client.  Adds as (d):  In circumstances other than those covered by Rule 1.10(c), when a lawyer becomes associated with a new firm, no lawyer in the new firm shall knowingly represent a person in a matter in which the lawyer is personally disqualified under Rule 1.9 unless both of the following apply:  (1) the new firm timely screens the personally disqualified lawyer from any participation in the matter and that lawyer is apportioned no part of the fee from that matter;  (2) written notice is given as soon as practicable to any affected former client.  (e): same as MR (c) but replaces “prescribed” with “required”  (f): same as MR (d)  Comments:  Adds between [5] and [6]:  <b>Removing Imputation</b>  [5A] Divisions (c) and (d) address imputation to lawyers in a new firm when a personally disqualified lawyer moves from one law firm to another. Division (c) imputes the conflict of a lawyer who has had substantial responsibility in a matter to all lawyers in a law firm to which the lawyer moves and prohibits the new law firm from assuming or continuing the representation of a client in the same matter if the client’s interests are materially adverse to those of the former client. Division (d)</p>

	<p>provides for removal of imputation of a former client conflict of one lawyer to a new firm in all other instances in which a personally disqualified lawyer moves from one firm to another, provided that the personally disqualified lawyer is properly screened from participation in the matter and the former client or client’s counsel is given notice.</p> <p>[5B] Screening is not effective to avoid imputed disqualification of other lawyers in the firm if the personally disqualified lawyer had substantial responsibility for representing the former client in the same matter in which the lawyer’s new firm represents an adversary of the former client. A lawyer who was sole or lead counsel for a former client in a matter had substantial responsibility for the matter. Determining whether a lawyer’s role in representing the former client was substantial in other circumstances involves consideration of such factors as the lawyer’s level of responsibility in the matter, the duration of the lawyer’s participation, the extent to which the lawyer advised or had personal contact with the former client and the former client’s personnel, and the extent to which the lawyer was exposed to confidential information of the former client likely to be material in the matter.</p> <p>[5C] Requirements for effective screening procedures are stated in Rule 1.0(l). Division (d) does not prohibit the screened lawyer from receiving compensation established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.</p> <p>[5D] Notice of the screened lawyer’s prior representation and that screening procedures have been employed, generally should be given as soon as practicable after the need for screening becomes apparent. When disclosure is likely to significantly injure the current client, a reasonable delay may be justified.</p> <p>[5E] Screening will not remove imputation where screening is not timely undertaken, or where the circumstances provide insufficient assurance that confidential information known by the personally disqualified lawyer will remain protected. Factors to be considered in deciding whether an effective screen has been created are the size and structure of the firm, the likelihood of contact between the disqualified lawyer and lawyers involved in the current representation, and the existence of safeguards or procedures that prevent the disqualified lawyer from access to information relevant to the current representation.</p> <p>[7] and [8] are identical to MR [11] and [12] Does not adopt [7] through [10].</p>
<p>OK Effective 1/1/08</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). Adds as (e): “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.”</p>

	<p>Comments:                  [7] is identical to MR [11]                  Does not adopt [7] through [10] or [12]</p>
<p>OR                  Effective                  1/1/05 and                  amended                  effective                  12/1/06</p>	<p>Replaced “General Rule” with “Screening” at the end of the Title.                  Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).                  (a): adds “or on Rule 1.7(a)(3)” after “prohibited lawyer”                  (d) and (e) same as MR (c) and (d)                  Adds as (c):                  When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9, unless the personally disqualified lawyer is screened from any form of participation or representation in the matter. For purposes of this rule, screening requires that:                  (1) the personally disqualified lawyer shall serve on the lawyer's former law firm an affidavit attesting that during the period of the lawyer's disqualification the personally disqualified lawyer will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member; and the personally disqualified lawyer shall serve, if requested by the former law firm, a further affidavit describing the lawyer's actual compliance with these undertakings promptly upon final disposition of the matter or representation;                  (2) at least one firm member shall serve on the former law firm an affidavit attesting that all firm members are aware of the requirement that the personally disqualified lawyer be screened from participating in or discussing the matter or the representation and describing the procedures being followed to screen the personally disqualified lawyer; and at least one firm member shall serve, if requested by the former law firm, a further affidavit describing the actual compliance by the firm members with the procedures for screening the personally disqualified lawyer promptly upon final disposition of the matter or representation; and                  (3) no violation of this Rule shall be deemed to have occurred if the personally disqualified lawyer does not know that the lawyer's firm members have accepted employment with respect to a matter which would require the making and service of such affidavits and if all firm members having knowledge of the accepted employment do not know of the disqualification.</p> <p>Does not adopt Comments</p>
<p>PA                  Effective                  1/1/05</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).                  Adds at the end of (a): or unless permitted by Rules 1.10(b) or (c).                  Adds (b) on screening:                  When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had</p>

	<p>previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter unless:</p> <p>(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and</p> <p>(2) written notice is promptly given to the appropriate client to enable it to ascertain compliance with the provisions of this rule.</p> <p>(c): same as MR (b)</p> <p>(d): A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7</p> <p>Adds as (e): While lawyers are associated in a firm, a prohibition in paragraph (a) through (i) of Rule 1.8 that applies to anyone of them shall apply to all of them.</p> <p>(f): same as MR (d)</p> <p>Adds as (g): The disqualification of lawyers in a firm with a former judge, arbitrator, mediator or other third-party neutral is governed by Rule 1.12.</p> <p>Adds as (h): Where a lawyer in a firm is disqualified from a matter due to consultation with a prospective client pursuant to Rule 1.18(b) or (c), disqualification of other lawyers in the same firm is governed by Rule 1.18(d).</p> <p>Adds as (i): The disqualification of a lawyer when another lawyer in the lawyer’s firm is likely to be called as a witness is governed by Rule 3.7.</p> <p>Comments: [2] Refers to Paragraph (a) instead of (a)(1) and changes reference to Rules in last sentence. [7] and [8] are identical to MR [11] and [12]</p> <p>Adds: [9] The disqualification of lawyers in a firm with a former judge, arbitrator, mediator or other third-party neutral is governed by Rule 1.12. [10] Where a lawyer is disqualified from a matter as a result of a consultation with a prospective client pursuant to Rule 1.18(b) and (c), disqualification of the other lawyers in the firm is governed by Rule 1.18(d). [11] The disqualification of a lawyer when another lawyer in the lawyer’s firm is likely to be called as a witness is governed by Rule 3.7.</p> <p>Does not adopt [7] through [10]</p>
<p>RI Effective 4/15/07</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p> <p>Adds as (c): (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless: (1) the personally disqualified lawyer is timely screened from any</p>

	<p>participation in the matter and is apportioned no part of the fee therefrom; and  (2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.  RI Rules (d) and (e) are identical to MR (c) and (d).</p> <p>Comments:  Adds as [6]:  Where the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation.</p> <p>Adds as [7]:  Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c)(2) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.</p> <p>Adds as [8]:  Notice, including a description of the screened lawyer’s prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.</p> <p>[9] is identical to MR [6]  [10] and [11] are identical to MR [11] and [12], respectively.  Does not adopt [7] through [10]</p>
<p>SC  Effective  10/1/05</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).  (a) Adds reference to 1.8(c)  Adds as (e):  “A lawyer representing a client of a public defender office, legal services association, or similar program serving indigent clients shall not be disqualified under this Rule because of the program’s representation of another client in the same or a substantially related matter if:  (1) the lawyer is screened in a timely manner from access to confidential information relating to and from any participation in the representation of the other client; and  (2) the lawyer retains authority over the objectives of the representation pursuant to Rule 5.4(c).”</p> <p>Comments:  [1] Similar to MR [1], but deletes all references to Rules and the word “unless;” adds to end of paragraph:  For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal</p>

	<p>agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to the other.</p> <p>Adds to Section:</p> <p>[2] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a <a href="#">firm</a> within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.</p> <p>[3] Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a <a href="#">firm</a>, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.</p> <p>[4] is identical to MR [11]</p> <p>Adds as [5]:</p> <p>Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in Rules 1.6, 1.9 and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and, thus, has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11.</p> <p>[6] is identical to MR [2]</p> <p>[7] is identical to MR [5]</p> <p>Does not adopt MR [3], [4], [6] through [10] or [12].</p>
<p>SD Effective 1/1/04</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p> <p>Comments: [2] Refers to Paragraph (a) instead of (a)(1) and deletes reference to Rule</p>

	<p>1.10(a)(2)                  [7] and [8] are identical to MR [11] and [12]                  Does not adopt MR [7] through [10]</p>
<p>TN                  Effective                  1/1/2011</p>	<p>(a) Deletes (1) and (2). References to Rules 1.7, 1.9 or 2.2. Adds after “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.”</p> <p>Replaces (c) with:                  Except with respect to paragraph (d) below, if a lawyer is personally disqualified from representing a person with interests adverse to a client of a law firm with which the lawyer was formerly associated, other lawyers currently associated in a firm with the personally disqualified lawyer may represent the person, notwithstanding paragraph (a) above, if both the personally disqualified lawyer and the lawyers who will represent the person on behalf of the firm act reasonably to:</p> <ol style="list-style-type: none"> <li>(1) identify that the personally disqualified lawyer is prohibited from participating in the representation of the current client; and</li> <li>(2) determine that no lawyer representing the current client has acquired any information from the personally disqualified lawyer that is material to the current matter and is protected by Rule 1.9(c);</li> <li>(3) promptly implement screening procedures to effectively prevent the flow of information about the matter between the personally disqualified lawyer and the other lawyers in the firm; and</li> <li>(4) advise the former client in writing of the circumstances that warranted the implementation of the screening procedures required by this Rule and of the actions that have been taken to comply with this Rule.</li> </ol> <p>Replaces (d) with:                  The procedures set forth in paragraph (c) may not be used to avoid imputed disqualification of the firm, if</p> <ol style="list-style-type: none"> <li>(1) the disqualified lawyer was substantially involved in the representation of a former client; and</li> <li>(2) the lawyer’s representation of the former client was in connection with an adjudicative proceeding that is directly adverse to the interests of a current client of the firm; and</li> <li>(3) the proceeding between the firm’s current client and the lawyer’s former client is still pending at the time the lawyer changes firms.</li> </ol> <p>TN Rules (e) is identical to MR (c) but adds “or former client” after “the affected client”</p> <p>TN Rule (f) is identical to MR (d)</p>
<p>TX                  Effective                  4/6/95</p>	
<p>UT</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p>

<p>Effective 11/1/05</p>	<p>Adds as (c): When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless: (c)(1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom, and (c)(2) written notice is promptly given to any affected former client.</p> <p>Does not adopt Comments</p>
<p>VT Effective 9/1/09</p>	<p>(a) Same as MR (a), but adds a reference to Rules 1.8(c) and 2.2; deletes “unless” as well as every subparagraph thereafter. Does not adopt (d)</p> <p>Does not adopt Comments</p>
<p>VA Effective 1/1/04</p>	<p>Title: same as former MR Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). (a): same as former MR but changes cross-references to “Rules 1.6, 1.7, 1.9, or 2.10(e)” Adds (d) The imputed prohibition of improper transactions is governed by Rule 1.8(k). (e): same as MR (d)</p> <p>Comments: First sentence of [1] is identical to the second to last sentence of MR [1]; VA Rules Comment [1] adds to the end of paragraph: “For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to the other.”</p> <p>Adds subparagraphs: [1a] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.</p>

	<p>[1b] Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.</p> <p>[1c] is similar to MR [11]; replaces “imputation” with “situation;” deletes “not this Rule;” deletes “Under Rule 1.11(d);” deletes “served clients...disqualified lawyer” and replaces with:</p> <p>“served private clients, the situation is governed by Rule 1.11(d)(1). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7 and 1.9.”</p> <p>Adds subparagraph [1d]:</p> <p>“Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in Rules 1.6, 1.9 and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and, thus, has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government’s recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11.”</p> <p>[2] is identical to MR [2], but refers to paragraph (a) instead of (a)(1) and deletes reference to Rule 1.10(a)(2)</p> <p>Does not adopt MR [3] through [4], [6] through [10] and [12].</p>
<p>WA Effective 9/1/06</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). (a): adds “Except as provided in paragraph (e)” to beginning Adds (e):</p> <p>When a lawyer becomes associated with a firm, no other lawyer in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:</p> <ol style="list-style-type: none"> <li>(1) the personally disqualified lawyer is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;</li> <li>(2) the former client of the personally disqualified lawyer receives notice of the conflict and the screening mechanism used to prohibit dissemination of information relating to the former representation;</li> <li>(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client.</li> </ol>

	<p>Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified lawyer serves on his or her former law firm and former client an affidavit attesting that the personally disqualified lawyer will not participate in the matter and will not discuss the matter or the representation with any other lawyer or employee of his or her current law firm, and attesting that during the period of the lawyer's personal disqualification those lawyers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified lawyer. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The law firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.</p> <p>Comments: [2] Makes reference to paragraph (a) instead of (a)(1), deletes reference to Rule 1.10(a)(2) and adds reference to Rule 1.10(e) WA Comment [4]: "Reserved" [7] and [8] are identical to MR [11] and [12]</p> <p>Additional Washington Comments (9 - 13)</p> <p>Principles of Imputed Disqualification</p> <p>[9] Former Washington RPC 1.10 differed significantly from the Model Rule. This difference was attributable in part to a 1989 amendment to Model Rule 1.10 that recodified conflicts based on a lawyer's former association with a firm into Model Rule 1.9, and in part to Washington's adoption of a screening rule in 1993. Washington's Rule has been restructured to make it and Rule 1.9 more consistent with the Model Rules. The conflicts that arise based on a lawyer's former association with a firm are now addressed in Rules 1.9(a) and (b), while Rule 1.10 addresses solely imputation of that conflict. Under Rule 1.9(a), such a lawyer need not have actually acquired information protected by Rules 1.6 and 1.9 to be disqualified personally, but because acquisition of confidential information is presumed in Washington, see, e.g., <i>Teja v. Saran</i>, 68 Wn. App. 793, 846 P.2d 1375 (1993), review denied, 122 Wn.2d 1008, 859 P.2d 604 (1993); <i>Kurbitz v. Kurbitz</i>, 77 Wn.2d 943, 468 P.2d 673 (1970), the recodification does not represent a change in Washington law. The Rule preserves prior Washington practice with respect to screening by allowing a personally disqualified lawyer to be screened from a representation to be undertaken</p>
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by other members of the firm under the circumstances set forth in paragraph (e). See Washington Comment [10].

[10] Washington's RPC 1.10 was amended in 1993 to permit representation with screening under certain circumstances. Model Rule 1.10 does not contain a screening mechanism. Rule 1.10(e) retains the screening mechanism adopted as Washington RPC 1.10(b) in 1993, thus allowing a firm to represent a client with whom a lawyer in the firm has a conflict based on his or her association with a prior firm if the lawyer is effectively screened from participation in the representation, is apportioned no part of the fee earned from the representation and the client of the former firm receives notice of the conflict and the screening mechanism. However, prior to undertaking the representation, non-disqualified firm members must evaluate the firm's ability to provide competent representation even if the disqualified member can be screened in accordance with this Rule. While

Rule 1.10 does not specify the screening mechanism to be used, the law firm must be able to demonstrate that it is adequate to prevent the personally disqualified lawyer from receiving or transmitting any confidential information or from participating in the representation in any way. The screening mechanism must be in place over the life of the representation at issue and is subject to judicial review at the request of any of the affected clients, law firms, or lawyers. However, a lawyer or law firm may rebut the presumption that information relating to the representation has been transmitted by serving an affidavit describing the screening mechanism and affirming that the requirements of the Rule have been met.

[11] Under Rule 5.3, this Rule also applies to nonlawyer assistants and lawyers who previously worked as nonlawyers at a law firm. See *Daines v. Alcatel*, 194 F.R.D. 678 (E.D. Wash. 2000); *Richard v. Jain*, 168 F. Supp. 2d 1195 (W.D. Wash. 2001).

[12] In serving an affidavit permitted by paragraph (e), a lawyer may serve the affidavit on the former law firm alone (without simultaneously serving the former client directly) if the former law firm continues to represent the former client and the lawyer contemporaneously requests in writing that the former law firm provide a copy of the affidavit to the former client. If the former client is no longer represented by the former law firm or if the lawyer has reason to believe the former law firm will not promptly provide the former client with a copy of the affidavit, then the affidavit must be served directly on the former client also. Serving the affidavit on a represented former client does not violate Rule 4.2 because the communication with the former client is not about the "subject of the representation" and the notice is "authorized . . . by law," i.e., the Rules of Professional Conduct.

	<p>[13] Rule 1.8(l) conflicts are not imputed to other members of a firm under paragraph (a) of this Rule unless the relationship creates a conflict of interest for the individual lawyer under Rule 1.7 and also presents a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.</p> <p>Does not adopt [4] and [7] through [10].</p>
<p>WV Effective 1/1/89</p>	<p>(a) Adds reference to Rules 1.8(c) and 2.2; deletes “unless” and all subparagraphic thereafter; Adds as (b):  <p>(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.</p> <p>WV Rules (c) is identical to MR (b) (c) is identical to MR (c) Does not adopt MR (d)</p> <p>Comments: Website unavailable 10/26</p> </p>
<p>WI Effective 7/1/07</p>	<p>Title changed to “Imputed disqualification: General Rule (a)(2) is equivalent to MR, but with different wording: “the prohibition arises under SCR 20:1.9, and” Adds as new (i):  <p>“the personally disqualified lawyer performed no more than minor and isolated services in the disqualifying representation and did so only at a <a href="#">firm</a> with which the lawyer is no longer associated;”</p> <p>WI Rules (ii) is identical to MR (i) WI Rules (iii) is comparable to MR (ii), but deletes everything after “the provisions of this rule” WI Rules does not adopt MR (iii)</p> <p>Comments: [7] and [8] are identical to MR [11] and [12] Does not adopt [7] through [10]</p> </p>
<p>WY Effective 7/1/06</p>	<p>Title: refers to “Imputed Conflicts of Interest” Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). (b)(2): cross-reference is to 1.9(b)</p> <p>Comments: [2] Makes reference to paragraph (a) instead of (a)(1) and deletes reference to 1.10(a)(2) in sentence beginning with “When a lawyer moves;” adds to end of paragraph:</p>

	<p>“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).”</p> <p>[7] and [8] are identical to MR [11] and [12]</p>
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