

**AMERICAN BAR ASSOCIATION**

**SECTION OF LITIGATION**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

1           **RESOLVED**, that the American Bar Association adopts the following new subsections  
2 (e) and (f) and related Comments to Model Rule of Professional Conduct 1.10:  
3

4           **Rule 1.10 Imputation of Conflicts of Interest: General Rule**  
5

6 (e) When a lawyer becomes associated with a firm, the firm may not undertake to or continue  
7 to represent a person in a matter that the firm knows or reasonably should know is the same or  
8 substantially related to a matter in which the newly associated lawyer (the “personally  
9 disqualified lawyer”), or a firm with which that lawyer was associated, had previously  
10 represented a client whose interests are materially adverse to that person unless:

11                   (1) the personally disqualified lawyer has no information protected by  
12 Rule 1.6 or Rule 1.9 that is material to the matter (“material information”);  
13 or  
14

15                   (2) the personally disqualified lawyer (i) had neither substantial  
16 involvement nor material information relating to the matter and (ii) is  
17 screened immediately from any participation in the matter in accordance  
18 with paragraph (f) of this Rule and is apportioned no part of the fee  
19 therefrom.  
20

21  
22 (f) For the purposes of paragraph (e) of this Rule, a personally disqualified lawyer in a firm will  
23 be deemed to have been screened from any participation in a matter if:

24                   (1) all material information which the personally disqualified lawyer has  
25 been isolated from the firm;  
26

27                   (2) the personally disqualified lawyer has been isolated from all contact  
28 relating to the matter with the client and any witness for or against the  
29 client;  
30

31                   (3) the personally disqualified lawyer and the firm have been instructed  
32 not to discuss the matter with each other;  
33

1 (4) the former client of the personally disqualified lawyer or of the firm  
2 with which the personally disqualified lawyer was associated receives  
3 notice of the conflict and an affidavit of the personally disqualified lawyer  
4 and the firm describing the procedures being used effectively to screen the  
5 personally disqualified lawyer, and attesting that (i) the personally  
6 disqualified lawyer will not participate in the matter and will not discuss  
7 the matter or the representation with any other lawyer or employee of his  
8 or her current firm, (ii) no material information was transmitted by the  
9 personally disqualified lawyer before implementation of the screening  
10 procedures and notice to the former client; and (iii) during the period of  
11 the lawyer's personal disqualification those lawyers or employees who do  
12 participate in the matter will be apprised as they become involved in the  
13 matter and on a periodic basis thereafter that the personally disqualified  
14 lawyer is screened from participating in or discussing the matter; and  
15

16 (5) the personally disqualified lawyer and the firm with which he is  
17 associated reasonably believe that the steps taken to accomplish the  
18 screening of material information are likely to be effective in preventing  
19 material information from being disclosed to the firm and its client.  
20

21 (g) In any matter in which the former client and the person or entity being represented by  
22 the firm with which the personally disqualified lawyer is now associated are not before a  
23 tribunal, the firm, the personally disqualified lawyer, or the former client may seek  
24 judicial inquiry of the screening procedures used, or may seek court supervision to ensure  
25 that implementation of the screening procedures has occurred and that effective actual  
26 compliance has been achieved.  
27

### 28 **Comment**

29 [8] Paragraphs (e) and (f) of Rule 1.10 apply when a lawyer moves from a  
30 private firm to another firm and those paragraphs are intended to create  
31 procedures similar in some cases to those under Rule 1.11(b) for lawyers  
32 moving from a government agency to a private firm. Paragraphs (e) and  
33 (f) of Rule 1.10, unlike the provisions of Rule 1.11, do not permit a firm,  
34 without the consent of the former client of the disqualified lawyer or of the  
35 disqualified lawyer's firm, to handle a matter with respect to which the  
36 disqualified lawyer was personally and substantially involved, or had  
37 material information, as noted in Comment 11 below. Like Rule 1.11,  
38 however, Rule 1.10(e) can only apply if the lawyer no longer represents  
39 the client of the former firm after the lawyer arrives at the lawyer's new  
40 firm.  
41

42 [9] If the lawyer has no confidential information about the representation  
43 of the former client, the new firm is not disqualified and no screening  
44 procedures are required. This would ordinarily be the case if the lawyer  
45 did no work on the matter and the matter was not the subject of discussion  
46 with the lawyer generally, for example at firm or working group meetings.

1 The lawyer must search his or her files and recollections carefully to  
2 determine whether he or she has confidential information. The fact that  
3 the lawyer does not immediately remember any details of the former  
4 client's representation does not mean that he or she does not in fact  
5 possess confidential information material to the matter.  
6

7 [10] If the lawyer does have material information about the representation  
8 of the client of his former firm, the firm with which he or she is associated  
9 may represent a client with interests adverse to the former client of the  
10 newly associated lawyer only if the personally disqualified lawyer had no  
11 substantial involvement with the matter and received no substantial  
12 material information about the matter, the personally disqualified lawyer is  
13 apportioned no part of the fee, and all of the screening procedures are  
14 followed, including the requirement that the personally disqualified lawyer  
15 and the new firm reasonably believe that the screening procedures will be  
16 effective.  
17

18 [11] In situations where the personally disqualified lawyer was  
19 substantially involved in a matter, or had material information, the new  
20 firm will only be allowed to handle the matter if the former client of the  
21 personally disqualified lawyer or of the law firm provides informed  
22 consent and the firm reasonably believes that the representation will not be  
23 adversely affected, all as required by Rule 1.7.  
24

25 [12] The former client is entitled to review of the screening procedures if  
26 the former client believes that the procedures will not be or have not been  
27 effective. If the matter involves litigation, the court before which the  
28 litigation is pending would be able to decide motions to disqualify or to  
29 enter appropriate orders relating to the screening. If the matter does not  
30 involve litigation, the former client can seek judicial review of the  
31 screening procedures from a trial court.  
32

33 [13] Paragraph (e) (2) does not prohibit the screened lawyer from  
34 receiving a salary or partnership share established by prior independent  
35 agreement, but that lawyer may not receive compensation directly related  
36 to the matter in which the lawyer is disqualified.