

Do you have a question about legal ethics that affects your practice? [ETHICSearch](#) can help. For quick and confidential research assistance click [here](#) to send us your questions.

Can a lawyer be a partner in more than one firm?

A lawyer who is a partner in firm A is considering becoming a partner in firm B while maintaining his partnership in firm A. Can he do so?

State and Local Bar ethics opinions

Most state and local bar ethics opinions on this topic state that a lawyer can be a partner in more than one firm, but that the firms in which he is a partner become essentially one firm for the purposes of imputed disqualification and conflicts of interest. See, Rules 1.10 *Imputation of Conflicts of Interest* and 1.7 *Conflict of Interest: General Rule* of the ABA Model Rules of Professional Conduct. See Also [Philadelphia Opinion 2001-5](#), which states as follows:



If an attorney is a participant of more than one firm at a time, be it as an associate, of counsel, partner or shareholder, Rule 1.7 requires that an ongoing conflict of interest check must be done between the clients not only of each firm, but also between the clients of the other firm(s) with which the attorney is associated. The conflict of interest check between firms is required because of imputed disqualification under Rule 1.10. That Rule provides (with very limited exception), that the conflict

of one member of a firm becomes the conflict of all members of a firm. Thus, if an individual is a member of more than one firm, it follows under the Rule that the conflict of any member of any of the involved firms becomes the conflict of all the members of the involved firms. Moreover, since there are different firms involved, the dictates of client confidentiality under Rule 1.6 require that each firm obtain a client's or potential client's permission to circulate enough information outside the firm to the other firms involved in order to do the required conflicts check.

[Accord](#) Missouri Opinion 980143 (undated) Maryland Opinion 88-45 (1/13/88) and Pennsylvania Opinion 88-176 (undated). [New Jersey Opinion 637](#) (undated) also stated that it was permissible for a lawyer to be a partner in more than one firm although the opinion's focus was on letterhead and supervisory lawyer issues as opposed to the conflicts and imputed disqualification issues addressed in the Missouri, Maryland and Pennsylvania opinions. For a contrary view, See [Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Opinion 99-7](#) (1999). The opinion based its reasoning on an earlier [Board Opinion 89-35](#) (1989) and certain provisions of the Ohio Code of Professional Responsibility. An excerpt from the Ohio opinion states as follows:

Nevertheless, the Board's advice in Opinion 89-35 was also based upon multiple rules within the Code of Professional Responsibility: DR 2-101 (a lawyer practicing in two firms is potentially misleading and confusing to the public); DR 4-101(B) (there would be a potential for the disclosure of confidential information between various firms and lawyers); Canon 5 (multiple firm membership may increase the number of conflicts of interest); EC 5-1, 5-13, 5-24 (lawyer who maintains two separate law practices may have difficulty exercising his or her professional judgment solely for the benefit of a client and free from outside influences; lawyer must maintain professional independence).

While the Ohio Board disapproved of lawyers being partners in more than one firm, it did subsequently state that a partner in one firm could be of counsel to another firm. See, [Ohio Board of Commissioners on Grievances and Discipline Opinion 2004-11](#).

ABA Ethics Opinions

ABA Informal Opinions 83-1499 *Partner's Associations* (1983) and 1253 (1972) *Partnership in more than one firm* state that a lawyer may be a partner in more than one firm; however their analysis of the imputed disqualification/conflicts of interest issues implicated are not as comprehensive as that found in the state and local bar opinions that post-date them. The analysis in Informal Opinion 1253 that is cited with approval in Informal Opinion 83-1499 states:

The Code of Professional Responsibility does not prohibit a lawyer from being associated with more than one law firm. However, it must be observed that... you and your partners and associates in both locations avoid any activity or relationship that would impair the independent professional judgment to which each client is entitled...

[Back to top](#)

Informal Opinions 1253 and 83-1499 also state that in order to avoid misleading clients, a lawyer who practices in multiple firms must actually have an ongoing presence in each firm.

ABA Formal Opinion 94-388 *Relationships Among Law Firms* (1994) touched on this issue. Part of this opinion discussed the extent to which a firm must disclose whether it is affiliated or associated with other law firms, and considered situations where the relationship between firms is just short of a partnership. The opinion stated:

It may be instructive to evaluate several examples along the continuum from that which clearly would not materially limit a representation (no relationship) to that which clearly does (full

partnership)...

Difficult questions are also raised when the professional relationship between the firms becomes more substantial than the network arrangement described above. As the two firms become more inextricably linked, the need to consider the conflict potential becomes more pronounced. As a general proposition the Committee concludes that where two law firms have a relationship in which they share profits, it is highly unlikely that one could represent a client whose interests are adverse to clients of the other firm without following the procedure prescribed by Rule 1.7(b)... ABA Formal Opinion 94-388

ABA Formal Opinion 84-351 *Letterhead Designation of Affiliated or Associated Law Firms* (1984) also addressed the imputed disqualification/conflicts of interest issues that can arise when two law firms develop a close relationship. The opinion stated:

When a law firm lists another as 'affiliated' or 'associated' with it, potential clients of the listing firm are led to believe that lawyers with the 'affiliated' or 'associated' firm are available to assist in the representation, at least in matters that the designation may describe. The client ordinarily also expects that lawyers of the 'affiliated' or 'associated' firm will not simultaneously represent persons whose interests conflict with the client's interests, just as would be true of lawyers who occupy an 'Of Counsel' relationship with the firm. See Informal Opinion 1315 (DR 5-105(D) applies to reciprocal 'Of Counsel' arrangements between two firms).

The Opinion continues with the following analysis of Model Rule 1.10 and its Model Code counterpart, DR 5-105:

Model Code DR 5-105(D) provides:

(D) If a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner, or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment. [emphasis supplied]

Model Rule 1.10(a) (Imputed Disqualification) provides: '(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 Rule 1.7, 1.8(c), 1.9 or 2.2.' [emphasis supplied] The Comment to Rule 1.10 points out that the use of the expression '*associated in a firm*' does not limit the application of the Rule to situations where the lawyers work in the same organization: [I]f they [two practitioners] 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 paragraph of the comment to Rule 1.10 referenced in Opinion 84-351 was moved to the comment to new [Rule 1.0 Terminology](#) pursuant to the [ABA Ethics 2000 Commission's](#) (E2K) recommendations. The full text of the E2K's recommendations along with the Official Reporter's explanation of changes memoranda are available [here](#).

Paragraph 2 of the Comment to Rule 1.0 states:

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (c) 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. However, if they present themselves to the public in a way

that suggests 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 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.

[Back to top](#)

ABA Formal Opinion 01-423 *Forming Partnerships with Foreign Lawyers* (2001), which permitted U.S. lawyers to form partnerships with foreign lawyers under certain circumstances, did not directly consider the imputed disqualification/conflicts of interests issues implicated but stated as follows:

Moreover, responsible lawyers in U.S. law firms must, in accordance with Rule 5.1, make reasonable efforts to ensure that client information respecting matters in their U.S. offices is protected in accordance with Rule 1.6, that conflicts with the interests of clients with U.S. matters are managed as Rule 1.7 and related Rules require, and that all the lawyers in the firm comply with other applicable Rules of Professional Conduct. - ABA Formal Opinion 01-423.

ABA Formal Opinion 88-356 *Temporary Lawyers* considered the confidentiality/conflicts of interest issues involved when temporary lawyers work for more than one firm. The opinion stated that depending on the nature of the relationship between the temporary lawyer and the firm that he currently works for (firm A), Rule 1.10 may raise disqualification issues if the lawyer subsequently works for another law firm (firm B) whose clients have interests adverse to clients of firm A. Formal Opinion 88-356 states:

Ultimately, whether a temporary lawyer is treated as being "associated with a firm" while working on a matter for the firm depends on whether the nature of the relationship is such that the temporary lawyer has access to information relating to the representation of firm clients other than the client on whose matters the lawyer is working and the consequent risk of improper disclosure or misuse of information relating to representation of other clients of the firm. For example, a temporary lawyer who works for a firm, in the firm office, on a number of matters for different clients, under circumstances where the temporary lawyer is likely to have access to information relating to the representation of other firm clients, may well be deemed to be "associated with" the firm generally under Rule 1.10 as to all other clients of the firm, unless the firm, through accurate records or otherwise, can demonstrate that the temporary lawyer had access to information relating to the representation only of certain other clients. If such limited access can be demonstrated, then the temporary lawyer should not be deemed to be "associated with" the firm under Rule 1.10. Also, if a temporary lawyer works with a firm only on a single matter under circumstances like the collaboration of two independent firms on a single case, where the temporary lawyer has no access to information relating to the representation of other firm clients,

the temporary lawyer should not be deemed "associated with" the firm generally for purposes of application of Rule 1.10. This is particularly true where the temporary lawyer has no ongoing relationship with the firm and does not regularly work in the firm's office under circumstances likely to result in disclosure of information relating to the representation of other firm clients.

As the direct connection between the temporary lawyer and the work on matters involving conflicts of interest between clients of two firms becomes more remote, it becomes more appropriate not to apply Rule 1.10 to disqualify a firm from representation of its clients or to prohibit the employment of the temporary lawyer. Whether Rule 1.10 requires imputed disqualification must be determined case by case on the basis of all relevant facts and circumstances, unless disqualification is clear under the Rules.

The ABA and other state bar association ethics committees have also considered imputed disqualification and conflicts issues in the context of lawyers who are of counsel to more than one firm. An excerpt from ABA Formal Opinion 90-357 *Use of Designation "Of Counsel"* (1990) states as follows:

A lawyer can surely have a close, regular, personal relationship with more than two clients; and the Committee sees no reason why the same cannot be true with more than two law firms. There is, to be sure, some point at which the number of relationships would be too great for any of them to have the necessary qualities of closeness and regularity, and that number may not be much beyond two, but the controlling criterion is "close and regular" relationships, not a particular number. As a practical matter, nonetheless, there is a consideration that is likely to put a relatively low limit on the number of "of counsel" relationships that can be undertaken by a particular lawyer: this is the fact that, as more fully discussed below, the relationship clearly means that the lawyer is "associated" with each firm with which the lawyer is of counsel. In consequence there is attribution to the lawyer who is of counsel of all the disqualifications of each firm, and, correspondingly, attribution from the of counsel lawyer to each firm, of each of those disqualifications. See Model Rule 1.10(a). In consequence, the effect of two or more firms sharing an of counsel lawyer is to make them all effectively a single firm, for purposes of attribution of disqualifications. [emphasis supplied]

Accord, Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Opinions 2004-11, 97-2 (1997) (Note: these two Ohio Board opinions disagree with Ohio State Bar opinion 04-02 (2002) which stated that Ohio lawyers may not be "of counsel" to one firm while being a partner or associate in another firm), Association of the Bar of the City of New York opinion 1995-8 (1998), Missouri Sup.Ct, Legal Ethics Counsel, Informal Op. 20010080 (2001), Maryland State Bar Assn., Op. 97-2 (1997), Connecticut Bar Assn., Op. 94-27 (1994); [Philadelphia Bar Assn., Op. 93-17](#) (1993); District of Columbia Bar, Op. 197 (1989); Virginia State Bar, Op. 1282 (1989); [State Bar of California, Op. 1986-88](#) (undated).

Further information on this topic is available [here](#).

[ETHICSearch](#) is intended to stimulate awareness of ethical problems and illustrate the varying approaches of different jurisdictions. It is not intended as legal advice. The ABA Model Rules of Professional Conduct and the opinions discussed are advisory only; the ethics rules, laws and

court decisions of your jurisdiction may dictate a different result.

[Back to top](#)

© 2006 American Bar Association

