

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO THE
MAINE RULES OF PROFESSIONAL CONDUCT

2018 Me. Rules 05

Effective: April 23, 2018

All of the Justices concurring therein, the following amendment to the Maine Rules of Professional Conduct is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in the understanding of the amendment, an Advisory Note appears after the text of the Rule amendment. The Advisory Note states the reason for the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 1.10 of the Maine Rules of Professional Conduct is amended to read as follows:

CLIENT-LAWYER RELATIONSHIP

....

RULE 1.10 *IMPUTATION OF CONFLICTS-OF-INTEREST: GENERAL RULE*

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless
- (1) 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; or
 - (2) the prohibition is based on Rule 1.9(a) or (b) and arises out the disqualified lawyer's association with a prior firm, and

- (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;
 - (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
 - (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.
- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
 - (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
 - (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
- (c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
- (d) For purposes of Rule 1.10 only, "firm" does not include government agencies. The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

- (e) If a lawyer or law student affiliated both with a law school legal clinic and with one or more lawyers outside the clinic is required to decline representation of any client solely by virtue of this Rule 1.10, this rule imposes no disqualification on any other lawyer or law student who would otherwise be disqualified solely by reason of an affiliation with that individual, provided that the originally disqualified individual is screened from all participation in the matter at and outside the clinic.

Advisory Note – April 2018

At the recommendation of the Advisory Committee, Rule 1.10(a) is amended to conform to subsection (a) as currently written in the ABA Model Rules. The purpose of the change is to adopt the screening protocols that apply to potential conflicts within a firm due to a lawyer's former association with another firm. No other changes were recommended, and the Committee specifically recommended retaining for clarity the sentence currently found in Maine Rule of Professional Conduct 1.10(d) but not found in subsection (d) of the Model Rules—"For purposes of Rule 1.10 only, 'firm' does not include government agencies"—and retaining subsection (e), not currently found in the ABA Model Rules.

Although the Supreme Judicial Court has not generally adopted the Comments to the Model Rules or the proposed Rules of Professional Conduct, the current Comments [7]-[10] to ABA Model Rule 1.10 provide helpful guidance on the application of screening provisions under Rule 1.10(a) as proposed:

[7] Rule 1.10(a)(2) . . . 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.

[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.

[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.

[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.

Dated: April 23, 2018

FOR THE COURT,*

LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
THOMAS E. HUMPHREY
Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.