

1 **Rule 1.10. Imputation of Conflicts of Interest: General Rule.**

2 (a) While lawyers are associated in a firm, none of them shall knowingly represent a
3 client when any one of them practicing alone would be prohibited from doing so by
4 Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited
5 lawyer and does not present a significant risk of materially limiting the representation of
6 the client by the remaining lawyers in the firm.

7 (b) When a lawyer has terminated an association with a firm, the firm is not
8 prohibited from thereafter representing a person with interests materially adverse to
9 those of a client represented by the formerly associated lawyer and not currently
10 represented by the firm, unless:

11 (b)(1) the matter is the same or substantially related to that in which the formerly
12 associated lawyer represented the client; and

13 (b)(2) any lawyer remaining in the firm has information protected by Rules 1.6 and
14 1.9(c) that is material to the matter.

15 (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm
16 shall knowingly represent a person in a matter in which that lawyer is disqualified under
17 Rule 1.9 unless:

18 (c)(1) the personally disqualified lawyer is timely screened from any participation in
19 the matter and is apportioned no part of the fee therefrom, and

20 (c)(2) written notice is promptly given to any affected former client.

21 (d) A disqualification prescribed by this Rule may be waived by the affected client
22 under the conditions stated in Rule 1.7.

23 (e) The disqualification of lawyers associated in a firm with former or current
24 government lawyers is governed by Rule 1.11.

25 [\(f\) An office of government lawyers who serve as counsel to a governmental entity](#)
26 [such as the office of the Utah Attorney General, the United States Attorney, or a district,](#)
27 [county, or city attorney does not constitute a "firm" for purposes of Rule 1.10 conflict](#)
28 [imputation.](#)

29 Comment

30 Definition of "Firm"

31 [1] ~~For purposes of the Rules of Professional Conduct, the term “firm” denotes~~
32 ~~lawyers in a law partnership, professional corporation, sole proprietorship or other~~
33 ~~association authorized to practice law; or lawyers employed in a legal services~~
34 ~~organization or the legal department of a corporation or other organization. See Rule~~
35 ~~1.0(c). “Firm,” as used in this rule, is defined in Rule 1.0(d).~~ Whether two or more
36 lawyers constitute a firm ~~within this definition for purposes of determining conflict~~
37 ~~imputation~~ can depend on the specific facts. See Rule 1.0, Comments [2]-[4].

38 [1a] Rule 1.10(f) does not appear in the ABA Model Rules. It is intended to
39 recognize the inherent differences between an office of government lawyers and those
40 in a firm, as defined in Rule 1.0(d). Notwithstanding the exclusion of an office of
41 government lawyers from the provisions of Rule 1.10, all other conflicts rules, such as
42 Rules 1.7, 1.8, and 1.11, must be fully satisfied on an individual-lawyer basis, and the
43 group of government attorneys must, by adopting appropriate procedures, ensure that
44 attorneys for whom there are individual conflict issues do not participate in and are
45 screened from the particular representation. See Rule 1.0(l) for definition of “screened.”

46 Principles of Imputed Disqualification

47 [2] The rule of imputed disqualification stated in paragraph (a) gives effect to the
48 principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such
49 situations can be considered from the premise that a firm of lawyers is essentially one
50 lawyer for purposes of the rules governing loyalty to the client, or from the premise that
51 each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with
52 whom the lawyer is associated. Paragraph (a) operates only among the lawyers
53 currently associated in a firm. When a lawyer moves from one firm to another, the
54 situation is governed by Rules 1.9(b) and 1.10(b).

55 [3] The rule in paragraph (a) does not prohibit representation where neither
56 questions of client loyalty nor protection of confidential information are presented.
57 Where one lawyer in a firm could not effectively represent a given client because of
58 strong political beliefs, for example, but that lawyer will do no work on the case and the
59 personal beliefs of the lawyer will not materially limit the representation by others in the
60 firm, the firm should not be disqualified. On the other hand, if an opposing party in a

61 case were owned by a lawyer in the law firm, and others in the firm would be materially
62 limited in pursuing the matter because of loyalty to that lawyer, the personal
63 disqualification of the lawyer would be imputed to all others in the firm.

64 [4] The rule in paragraph (a) also does not prohibit representation by others in the
65 law firm where the person prohibited from involvement in a matter is a nonlawyer, such
66 as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the
67 lawyer is prohibited from acting because of events before the person became a lawyer,
68 for example, work that the person did while a law student. Such persons, however,
69 ordinarily must be screened from any personal participation in the matter to avoid
70 communication to others in the firm of confidential information that both the nonlawyers
71 and the firm have a legal duty to protect. See Rules 1.0(l) and 5.3.

72 [5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to
73 represent a person with interests directly adverse to those of a client represented by a
74 lawyer who formerly was associated with the firm. The Rule applies regardless of when
75 the formerly associated lawyer represented the client. However, the law firm may not
76 represent a person with interests adverse to those of a present client of the firm, which
77 would violate Rule 1.7. Moreover, the firm may not represent the person where the
78 matter is the same or substantially related to that in which the formerly associated
79 lawyer represented the client and any other lawyer currently in the firm has material
80 information protected by Rules 1.6 and 1.9(c).

81 [5a] The Utah rule differs from the ABA Model Rule in allowing lawyers disqualified
82 under Rule 1.9 to be screened from participation in a matter under certain
83 circumstances. If the conditions of paragraph (c) are met, imputation is removed, and
84 consent to the new representation is not required. Lawyers should be aware, however,
85 that courts may impose more stringent conditions in ruling upon motions to disqualify a
86 lawyer from pending litigation.

87 [5b] Requirements for screening procedures are stated in Rule 1.0(l). Paragraph
88 (c)(2) does not prohibit the screened lawyer from receiving a salary or partnership share
89 established by prior independent agreement, but that lawyer may not receive
90 compensation directly related to the matter in which the lawyer is disqualified.

91 [5c] Notice, including a description of the screened lawyer's prior representation and
92 of the screening procedures employed, should be given as soon as practicable after the
93 need for screening becomes apparent.

94 [6] Rule 1.10(d) removes imputation with the informed consent of the affected client
95 or former client under the conditions stated in Rule 1.7. The conditions stated in Rule
96 1.7 require the lawyer to determine that the representation is not prohibited by Rule
97 1.7(b) and that each affected client or former client has given informed consent to the
98 representation, confirmed in writing. In some cases, the risk may be so severe that the
99 conflict may not be cured by client consent. For a discussion of the effectiveness of
100 client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For
101 a definition of informed consent, see Rule 1.0(f).

102 [7] Where a lawyer has joined a private firm after having represented the
103 government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule
104 1.11(d), where a lawyer represents the government after having served clients in private
105 practice, nongovernmental employment or in another government agency, former-client
106 conflicts are not imputed to government lawyers associated with the individually
107 disqualified lawyer.

108 [8] Where a lawyer is prohibited from engaging in certain transactions under Rule
109 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition
110 also applies to other lawyers associated in a firm with the personally prohibited lawyer.

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