

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 client when any
3 one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition
4 is based on a personal interest of the prohibited lawyer and does not present a significant risk of
5 materially limiting the representation of the client by the remaining lawyers in the firm.

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

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

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

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

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

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

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

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

22 (f) An office of government lawyers who serve as counsel to a governmental entity such as the office
23 of the Utah Attorney General, the United States Attorney, or a district, county, or city attorney does not
24 constitute a "firm" for purposes of Rule 1.10 conflict imputation.

25 **Comment**

26 **Definition of "Firm"**

27 [1] "Firm," as used in this rule, is defined in Rule 1.0(d). Whether two or more lawyers constitute a
28 firm for purposes of determining conflict imputation can depend on the specific facts. See Rule 1.0,
29 Comments [2] - [4].

30 [1a] Rule 1.10(f) does not appear in the ABA Model Rules. It is intended to recognize the inherent
31 differences between an office of government lawyers and those in a firm, as defined in Rule 1.0(d).

32 Notwithstanding the exclusion of an office of government lawyers from the provisions of Rule 1.10, all
33 other conflicts rules, such as Rules 1.7, 1.8, and 1.11, must be fully satisfied on an individual-lawyer
34 basis, and the group of government attorneys must, by adopting appropriate procedures, ensure that
35 attorneys for whom there are individual conflict issues do not participate in and are screened from the
36 particular representation. See Rule 1.0(~~t~~o) for definition of "screened."

37 **Principles of Imputed Disqualification**

38 [2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to
39 the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the
40 premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the
41 client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each
42 lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently
43 associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.
44 9(b) and 1.10(b).

45 [3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty
46 nor protection of confidential information are presented. Where one lawyer in a firm could not effectively
47 represent a given client because of strong political beliefs, for example, but that lawyer will do no work on
48 the case and the personal beliefs of the lawyer will not materially limit the representation by others in the
49 firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by
50 a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because
51 of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the
52 firm.

53 [4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the
54 person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor
55 does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before
56 the person became a lawyer, for example, work that the person did while a law student. Such persons,
57 however, ordinarily must be screened from any personal participation in the matter to avoid
58 communication to others in the firm of confidential information that both the nonlawyers and the firm have
59 a legal duty to protect. See Rules 1.0(~~m~~o) and 5.3.

60 [5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with
61 interests directly adverse to those of a client represented by a lawyer who formerly was associated with
62 the firm. The Rule applies regardless of when the formerly associated lawyer represented the client.
63 However, the law firm may not represent a person with interests adverse to those of a present client of
64 the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter
65 is the same or substantially related to that in which the formerly associated lawyer represented the client
66 and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

67 [5a] The Utah rule differs from the ABA Model Rule in allowing lawyers disqualified under Rule 1.9 to
68 be screened from participation in a matter under certain circumstances. If the conditions of paragraph (c)
69 are met, imputation is removed, and consent to the new representation is not required. Lawyers should
70 be aware, however, that courts may impose more stringent conditions in ruling upon motions to disqualify
71 a lawyer from pending litigation.

72 [5b] Requirements for screening procedures are stated in Rule 1.0(~~m~~o). Paragraph (c)(2) does not
73 prohibit the screened lawyer from receiving a salary or partnership share established by prior

74 independent agreement, but that lawyer may not receive compensation directly related to the matter in
75 which the lawyer is disqualified.

76 [5c] Notice, including a description of the screened lawyer's prior representation and of the screening
77 procedures employed, should be given as soon as practicable after the need for screening becomes
78 apparent.

79 [6] Rule 1.10(d) removes imputation with the informed consent of the affected client or former client
80 under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine
81 that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has
82 given informed consent to the representation, confirmed in writing. In some cases, the risk may be so
83 severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client
84 waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed
85 consent, see Rule 1.0(f).

86 [7] Where a lawyer has joined a private firm after having represented the government, imputation is
87 governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the
88 government after having served clients in private practice, nongovernmental employment or in another
89 government agency, former-client conflicts are not imputed to government lawyers associated with the
90 individually disqualified lawyer.

91 [8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k)
92 of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers
93 associated in a firm with the personally prohibited lawyer.