

## **Avoiding Conflicts of Interest When Changing Firms**

**by**

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Lawyers who have been practicing law for a number of years may recall a time when young lawyers graduated from law school, were hired by a law firm and remained with the firm until retirement.

However, over the years this has become less the norm as lawyers have become more willing to change firms. While such moves may increase job satisfaction, provide greater remuneration or simply provide the lawyer with a change of scenery, they also increase the likelihood that the lawyer's new firm will find itself with a potential conflict of interest.

This is especially true when the lawyer changes firms, but continues to practice in the same area of law. When the Minnesota Rules of Professional Conduct were updated in 2005, this increased mobility and attendant problems were recognized, and hopefully better addressed, by changes to the rules.

Rules governing the movement of lawyers between firms must deal with issues of client expectations, the ability of clients to hire the attorney of their choice and the ability of lawyers to create or associate with new firms. As noted in the comments to the rules, a client represented by the departing lawyer's former firm must be reasonably assured that the principle of loyalty is not compromised.

On the other hand, the rules dealing with duties to former clients should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel.

Finally, the rules should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. Comment [4] to Rule 1.9 states that "[i]f the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel."

Rule 1.9, previously entitled "Conflict of Interest: Former Client," is now entitled "Duties to Former Clients." A subparagraph was added to the rule providing that when a lawyer changes firms, the lawyer (and under the conflict imputation rule, the new firm) is prohibited from representing a client only when:

- the interests of the new client are materially adverse to those of a client of the departing lawyer's former firm, and
- the departing lawyer has actually acquired confidential information.

Thus, if a lawyer with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm would be disqualified from representing another client in the same or a related matter, even though the interests of the two clients conflict.

Further, even if the departing lawyer is prohibited from undertaking a representation pursuant to Rule 1.9(b), other lawyers in the lawyer's new firm are not necessarily prohibited from the representation.

In such a situation, lawyers in the new firm may represent a client if "there is no reasonable apparent risk that confidential information of the previously represented client will be used with material adverse effect."

This is the case when three factors are met: "(1) any confidential information communicated to the lawyer is unlikely to be significant in the subsequent matter; (2) the lawyer is subject to screening measures adequate to prevent disclosure of the confidential information and to prevent involvement by that lawyer in the representation; and (3) timely and adequate notice of the screening has been provided to all affected clients."

Lawyers may no longer remain with one firm for their entire career. Hopefully, updates to the Rules of Professional Conduct better address this new reality.