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Standing Committee on Professional Ethics

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INFORMAL OPINION 15-06

WHETHER A LAWYER MAY PRACTICE LAW SIMULTANEOUSLY
IN MORE THAN ONE LAW FIRM

An Ohio law firm (“Law Firm”) has asked whether a lawyer may practice law simultaneously in more than one law firm. The Law Firm hires lawyers from various jurisdictions, including Connecticut. For purposes of this opinion, we assume that the associated lawyers will independently maintain their existing affiliation and practice with their Connecticut law firm(s).

It is our opinion that the Connecticut Rules of Professional Conduct (“the Rules”) do not prohibit a lawyer from practicing simultaneously in more than one law firm.¹ A lawyer who wishes to practice in more than one firm, must, however, do so in a manner that complies with the Rules, and practice in multiple firms will require careful attention to compliance with a number of provisions of the Rules. These include: the obligation to avoid conflicts of interest, under Rules 1.7 and 1.9, and imputed conflicts under Rules 1.10, 1.18(c) and 1.8(k); the duty of confidentiality under Rules 1.6 and 1.18; avoiding false and misleading communications under Rules 7.1 and 7.5; the duty to supervise others and ensure compliance with the Connecticut Rules of Professional Conduct under Rules 5.1 and 5.3; the duty to prevent the unauthorized practice of law under Rule 5.5; and duties with respect to safekeeping of client’s funds under Rule 1.15(b).

¹ Numerous other jurisdictions have come to the same conclusion. *See* D.C. Bar Legal Ethic Opinion 338 (Oct. 2006); Florida Ethics Opinion 93-7 (May 15, 1994, rev. August 24, 2011); Georgia Formal Advisory Opinion No. 97-2 (Feb. 13, 1997); N.Y. State Bar Assn., Comm. on Prof’l Ethics, Opinion 944 (Nov. 8, 2012); Philadelphia Bar Assn., Prof’l Guidance Comm., Opinion 2001-5 (April 2001); S.C. Bar, Ethics Advisory Opinion 95-15 (July 1995). *See also* ABA Comm. on Ethics and Prof’l Responsibility, Informal Op. 1253; ABA Comm. on Ethics and Prof’l Responsibility, Informal Op. 83-1499. A few have found to the contrary. *See* Iowa Ethics Op. 87-09 (1987); Texas Ethics Op. 402 (1981) (although this opinion was explicitly based on ABA Formal Op. 330 (1972), which was reversed by ABA Formal Op. 90-357 (1990)); Maryland State Bar Assn. Comm. on Ethics, Op. 88-45 (Jan. 13, 1988).

Conflicts of Interest

A lawyer practicing simultaneously in multiple law firms must establish a means by which conflicts of interest will be identified and resolved, both at the outset of each new relationship and on an ongoing basis. Rule 1.7 (a) generally prohibits representation of a client where that representation would involve a “concurrent conflict of interest.” A “concurrent conflict of interest” arises in two distinct situations: either (i) the contemplated representation of one client will be directly adverse to another client, or (ii) there is a significant risk that the representation of one or more clients would be materially limited by the lawyer's responsibility to another client, a former client, or a third person.²

When a lawyer is associated with more than one firm, the imputation of conflicts of interest under Rule 1.10 requires that conflicts checks must extend across each of the firms. Rule 1.10 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 Rules 1.7 or 1.9...

Although the prohibitions contained in Rule 1.10 can be overcome under certain circumstances if they are based on a personal conflict of interest of the disqualified lawyer³, if they arise from a lawyer's association with a prior firm⁴, or if they are waived in accordance with Rule 1.7⁵, every time another lawyer joins the Law Firm, and every time any lawyer associated with the Law Firm contemplates undertaking a new matter, including a new matter for an existing client, Rule 1.10 will come into play. For conflicts purposes, the Law Firm, any Connecticut lawyers it employs, and their Connecticut firms, as well as any lawyers from other jurisdictions associated with the Law Firm and their firms, must be viewed as a single lawyer for the purposes of Rule 1.10. *See* Official Commentary to Rule 1.10.

Likewise, if a lawyer is disqualified from representing a client because of the lawyer's duties to a prospective client under Rule 1.18, that disqualification is imputed to any lawyer in a firm with which the disqualified lawyer is associated. Rule 1.18(c). Additionally, the specific prohibitions contained in Rule 1.8, pertaining to business transactions with clients, the use of information to the disadvantage of a client, the solicitation of gifts from clients, and providing financial assistance to clients, will also be imputed to all of the lawyers associated with the multiple firms. Rule 1.8(k).

² If a lawyer reasonably concludes that such limitations do exist, the prohibition of Rule 1.7 may be overcome by complying with Rule 1.7 (b) (1) - (4). More specifically, the representation may proceed if: the lawyer reasonably believes that he will be able to provide competent and diligent representation to each affected client; the representation is not prohibited by law; the representation will not involve the assertion of a claim by one client against another in the same proceeding; and each affected party gives its informed consent confirmed in writing.

³ Rule 1.10(a)(1).

⁴ Rule 1.1(a)(2).

⁵ Rule 1.10(c).

Depending upon the specific arrangement with the Law Firm, a Connecticut lawyer may be responsible for the firm's compliance with the Rules of Professional Conduct under Rule 5.1, which provides:

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

Such measures include establishing internal policies and procedures designed to detect and resolve conflicts of interest, both at the outset of each new relationship and on an ongoing basis. *See* Official Commentary to Rules 1.7 and 5.1. Given the complexity of conducting conflict checks among lawyers practicing simultaneously in multiple firms, aggravated by the imputation rules under Rules 1.10, 1.18(c) and 1.8(k), it would be imperative for all of the lawyers involved to notify the other lawyers in the associated firms of all of their firm associations, on an ongoing basis.

If any of the lawyers involved will be relying on screening the disqualified lawyer under Rule 1.10(a)(2) or 1.18(d)(2)(i), a careful examination of the compensation arrangements must be undertaken to make sure that the disqualified lawyer is apportioned no part of the fee for the matter from which she or he is disqualified. Rule 1.10(a)(2)(A). Also, given the requestor's indication that the firm will be serving public sector clients, it is also worth noting that where the Connecticut lawyer has served or is currently serving as a public officer or employee, the special conflicts of interest concerns of Rule 1.11 (regarding former and current government officers and employees) may be implicated.

Confidentiality

The imputation rules discussed above also raise concerns regarding a lawyer's duty to protect a client's confidential information. In order to perform a conflicts check across all of the imputed lawyers and firms, a lawyer must circulate enough information so that conflicts can be detected and resolved. Rule 1.6 prohibits a lawyer from revealing information relating to representation of a client without the informed consent of the client, except under very narrow circumstances.⁶ These protections are extended to former clients by Rule 1.9(c), and to prospective clients under Rule 1.18(b), which provides: "Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation. . . ."

⁶ A lawyer may reveal such information necessary to "[d]etect and resolve conflicts of interest that arise from the lawyer's change of employment...", as long as "...the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client." Rule 1.6(c)(5). While this exception may prove useful in performing an initial conflicts check at the time the lawyer joins the Law Firm as a "change of employment," it does not pertain to a lawyer's duties of confidentiality going forward.

Since the Law Firm and the associated Connecticut lawyer's other firm are different firms, the dictates of client confidentiality under Rule 1.6, as well as the duties to prospective clients under Rule 1.18, and to former clients under Rule 1.9(c), may require that the lawyer obtain such client's, prospective client's or former client's informed consent to circulate enough information to the imputed lawyers and firms so that the required conflicts check may be performed. The lawyer must request such consent promptly under Rule 1.4.

In addition to the concerns expressed by this Committee in Informal Opinion 2013-07, Cloud Computing (June 19, 2013), a lawyer practicing in multiple firms must be especially diligent in protecting confidential client information where cloud technology is used across multiple firms and attorneys.

Advertising and Communication

Rule 7.1 requires that a lawyer's communications concerning the lawyer's services shall not be "false or misleading." Communications by a lawyer can be false or misleading if they "omit a fact necessary to make the statement considered as a whole not materially misleading." Rule 7.1. Add to this mix the lawyer's duty to communicate with a client under Rule 1.4 so that the client can make informed decisions regarding the representation. These rules taken together would require lawyers practicing in multiple firms to inform their clients of all multiple firm associations, on an ongoing basis. Clients may need this information in order to make informed decisions about the representation; and, prospective clients may better be able to assist the lawyer in identifying conflicts if they have this information.

Under Rule 7.5(a), a lawyer may not use a firm name, letterhead or other professional designation that is false or misleading in violation of Rule 7.1. *See* Informal Opinion Number 02-09, Designation of Attorneys Associated with Firm on Firm Letterhead (June 25, 2002). Care should be taken to ensure that clients and prospective clients are not misled as to which firm and attorney represents them, which attorneys are available to work on their matter, and the jurisdictional limitations of each.

Obligation to Insure Compliance with the Rules

Because the Law Firm intends to be a national and international firm, a Connecticut lawyer may have additional responsibilities under the Rules. If the lawyer will be supervising other lawyers or nonlawyers working for clients on matters in Connecticut, the lawyer must be mindful of the obligation to ensure compliance with the Connecticut Rules of Professional Conduct under Rules 5.1, 5.3 and 5.5, to prevent the unauthorized practice of law, as defined in Connecticut Rules of Superior Court, Practice Book § 2-44A.

Safeguarding Property

Finally, under Rule 1.15(b), lawyers shall hold client's funds in their possession in connection with a representation *in a separate account maintained in the state where the lawyer's office is situated* unless the client consents to another arrangement. While the number and prevalence of interstate banks authorized to do business in Connecticut should make compliance with this rule a simple matter, when deciding to join an out-of-state firm, a Connecticut lawyer should not overlook these requirements.

In conclusion, a lawyer is permitted by the Connecticut Rules of Professional Conduct to practice law simultaneously in more than one law firm, provided that all associated lawyers do so in manner that complies with the Rules. The Rules require all associated lawyers, *inter alia*: to implement and maintain appropriate measures to detect and resolve conflicts of interest; both at the commencement of each new lawyer's association and as any associated lawyer contemplates accepting a new matter; to safeguard and preserve client confidentiality; to adequately communicate to clients and prospective clients the lawyer's multiple firm affiliations; to ensure compliance with the Connecticut Rules of Professional Conduct; and to maintain the safekeeping of client property. This opinion is limited to the conduct of Connecticut lawyers under the Connecticut Rules of Professional Conduct. We do not opine on requirements imposed upon lawyers in other jurisdictions by their rules of conduct, the statutory requirements for doing business in Connecticut, or upon potentially competing fiduciary obligations of lawyers to multiple firms.

THE COMMITTEE ON PROFESSIONAL ETHICS

BY 
Marcy Tench Stovall, Chair