

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2005-06 Request No. 899
Issued June 3, 2005**

FACTS:

The inquiring attorney and his/her law partner wish to form a law firm with a third attorney (Future Partner). Before entering private practice, the inquiring attorney worked as an assistant public defender. While at the Public Defender's office, the inquiring attorney represented Defendant A in a murder indictment. Defendant A entered into a plea agreement, agreeing to testify against a co-defendant, Defendant B. Future Partner represents Defendant B in the case. The inquiring attorney informs the Panel that Defendant B is willing to waive any potential conflict and that the inquiring attorney will be screened from Defendant B's matter.

ISSUE PRESENTED:

Will the inquiring attorney's conflict of interest be imputed to the proposed new firm?

OPINION:

The inquiring attorney's conflict of interest will be imputed to the new firm under Rule 1.10(b). The new firm would be permitted to continue to represent Defendant B provided the inquiring attorney's former client, Defendant A, consents after consultation.

REASONING:

Rule 1.10 entitled "Imputed disqualification: General rule" applies to this inquiry. In pertinent part, the rule states as follows:

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.

* * *

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

The interests of Defendant A and Defendant B in the instant inquiry are materially adverse. During the former representation of Defendant A, the inquiring attorney acquired information protected by Rule 1.6 and 1.9(b) which would be material to Defendant B's matter. Therefore, under Rule 1.10(b) the inquiring attorney's conflict of interest would be imputed to the new firm.

Rule 1.10(d) permits a disqualification prescribed by paragraph (b) to be waived by the affected client. The new law firm could continue to represent Defendant B provided Defendant A waives the conflict of interest after consultation.

Rule 1.10 does not provide for screening around the affected attorney as a method of curing a disqualification. Client waiver is required. Compare Rule 1.11 (a)(1) (other lawyers in firm may represent a client if former government lawyer who is disqualified is screened from any participation in the matter and is apportioned no part of the fee therefrom.) However, a firm could offer screening as a way of obtaining a client's waiver, or a client may request screening as a condition of waiver.

The Panel concludes that the inquiring attorney's conflicts of interest are imputed to the new firm under Rule 1.10(b). The new firm would be permitted to continue to represent Defendant B provided Defendant A consents after consultation. The inquiring attorney has a continuing obligation of confidentiality to Defendant A pursuant to Rule 1.6.