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North Carolina Bar Opinion Advises Firms to Run Conflicts Checks for Newly Hired Law School Graduates

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Lawyers for the Profession® Alert

North Carolina State Bar Ethics Comm., Formal Opinion. 2010-12

Brief Summary

The North Carolina State Bar Ethics Commission published a formal opinion addressing the duty to ensure that newly hired law graduates do not bring conflicts of interests from their prior law clerk experiences when they join a law firm. Law clerk conflicts are not imputed to the new firm and timely screening can resolve conflicts concerns.

Complete Summary

The Ethics Commission reviewed issues arising out of a common situation, which is somewhat analogous to a lateral hire: A new law school graduate joins a firm other than the one for which he or she was a law clerk while in law school. The hiring firm later discovers that the newly hired lawyer had, prior to graduating, worked on a matter adverse to the hiring law firm's current client. In North Carolina, pursuant to this formal ethics opinion, the hiring law firm and the law firm for which the person worked as a clerk must act within ethical boundaries to seek or disclose client matters so that the hiring firm can identify and screen for potential conflicts of interest.

The ethics commission concluded that work performed as a law clerk does not impute to other members of the graduate's new law firm. However, the law clerk's prior work is deemed to sufficiently bestow the new lawyer with information and knowledge so that the hiring firm must screen client matters previously worked on by the new hire. A screen—along with written notice given to any affected clients—should be timely implemented upon the hiring firm's learning of the need for one.

While acknowledging that law firms have a duty of confidentiality under Rule 1.6 (a) of the Rules of Professional Conduct not to disclose client information, the ethics committee nonetheless indicated that the respective law firms are obliged by Rule 1.6(b) of the Rules of Professional Conduct to protect their current clients in seeking and disclosing the client matters worked on by law clerks. Rule 1.6(b) permits lawyers to violate Rule 1.6(a) to comply with the Rules of Professional Conduct. Citing the 2009 ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 09-455, the ethics

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committee's formal opinion reiterated that disclosure of client names and general information to identify and resolve potential conflicts of interest would be such an instance, provided that the attorney-client privilege is protected and the client is not prejudiced. To prohibit such disclosure would simultaneously prohibit compliance with the Rules of Professional Conduct's conflicts rules.

Significance of Opinion

This opinion draws a workable line with respect to conflicts screening for new lawyers who have prior experience as a law clerk in another firm. Recognizing the potential for information-specific conflicts, screens can be an appropriate mechanism to deal with ethics concerns in this context. The opinion concludes that the former law firm would not breach its ethical duties to its clients so long as any disclosure goes no further than reasonably necessary to detect and resolve conflicts and does not waive the attorney-client privilege.

For more information, please contact your regular [Hinshaw](#) attorney.

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