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Contract Lawyer's Conflicts of Interest Not Necessarily Imputed to Firm According to D.C. Bar

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Lawyers for the Profession® Alert

District of Columbia Legal Ethics Committee, Op. 352 (Feb. 2010)

Brief Summary
The District of Columbia Legal Ethics Committee offered guidance on when a contract lawyer's conflicts of interest are imputed to a law firm. The Committee specifically opined that a temporary contract lawyer's conflicts will not be imputed when the attorney works on a single project and is segregated from both the firm's office space and the confidential information of the firm's other clients.

Complete Summary
The District of Columbia Legal Ethics Committee addressed the conflicts of interest and confidentiality issues that affect contract lawyers and the firms that hire them. The Committee offered specific guidelines on how to avoid imputation of conflicts and how to safeguard client confidences.

Given the fact that contract lawyers may frequently move between firms, the Committee acknowledged that such attorneys may have trouble avoiding conflicts of interest, and therefore have trouble finding work. Rule 1.10 states that when a lawyer "becomes associated with a firm" his or her conflicts of interest will be imputed to the firm. The Committee offered guidance on how contract lawyers can avoid becoming associated with a firm and thus prevent imputation of conflicts.

Whether a contract lawyer is associated with a firm turns on three factors according to the Committee: (1) the scope of the attorney's relationship with the firm, (2) the duration of the relationship, and (3) the potential for the lawyer's exposure to the firm's confidential client information.

The scope of the lawyer's relationship with the firm, the Committee noted, is related to the number of matters the attorney works on, as well as whether clients or the public at large would be under the impression that a continuing relationship exists between the firm and the lawyer. The latter issue turns on, *inter alia,* how the lawyer is presented in promotional materials and letters to clients. But regarding duration, the Committee merely noted that the relationship should not be indefinite.

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The Committee also offered guidelines for protecting against the lawyer's exposure to the firm's confidential client information. For example, the attorney can be stationed at a different location or at least in a segregated area within the firm, and the lawyer's electronic access can be limited to the matter he or she is working on.

But even assuming that the contract lawyer is not associated with the firm, the Committee noted that both parties still have confidentiality obligations. The firm must discuss with the lawyer his or her duty to avoid obtaining or misusing certain confidential information, and the attorney must execute a confidentiality agreement to that end. In addition to segregating the lawyer from client files, the firm should be proactive in ensuring that its attorneys and staff are on notice of what information the contract lawyer is screened from. For example, the firm might lock file cabinets, designate the contract lawyer's area as a place to avoid leaving confidential information, and give firm employees specific instructions on their confidentiality obligations. Finally, the firm must similarly take steps to ensure that it does not obtain confidential information from the contract attorney.

Significance of Opinion
This opinion offers guidance on how to navigate the conflicts of interest minefield that can be presented upon hiring a contract lawyer who has worked at other law firms, and who likely will do so in the future. This guidance should help mitigate the extent to which Rule 1.10 may impede the ability of contract attorneys to find work and can help firms reduce the risk involved in hiring them.

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