



# Dear Ethics Lawyer™

## The Legal Ethics Project. Supporting professionalism with information.

### Q: Dear Ethics Lawyer,

I have a hiring question that I don't think is covered by the rules. We want to hire a new LAA, and I'm talking to one at another law firm. I have no way of knowing or identifying if the LAA is or has supported any lawyer at the LAA's current firm who is or has been on the other side of any lawyer at our firm, especially in matters that aren't in court. My friend says that it doesn't matter – that the Rules of Professional Conduct don't apply to administrative assistants, they apply only to lawyers. Is that right? Do we have any duties here?

**A:** Your friend is correct that non-lawyers are not subject to the Rules of Professional Conduct, but the lawyers who employ/supervise them may be disciplined for the non-lawyer's conduct if the lawyers fail to "make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer" or that the lawyer's firm has in effect measures giving reasonable assurance of that. Model Rule 5.3(a),(b).

Therefore, in the context of this problem, the majority rule is that while work of a non-lawyer such as an LAA on a matter for an adverse client at a prior firm does not automatically disqualify the firm that later hires them, steps must be taken at the hiring firm to ensure that any privileged or other confidential information is not disclosed by them and not used, including screening the new hire from any ongoing matter and directing them not to disclose any confidential information. See Rule 1.10(a), Cmt 4. See also, e.g., *In re Johnston*, 872 N.W.2d 300 (N.D. 2015) (failure to screen non-lawyer from matter worked upon at prior firm violated Rule 5.3). The same considerations would apply to a corporate law department.

A good practice is to use your conflict system (and/or in a smaller firm or law department, to inquire of your attorneys) to identify cases in which your firm is adverse to the firm from which the LAA would come, and then also to inquire of the LAA as part of the recruiting process whether they are involved in any such matters, or in other matters in which your firm is on the other side. Then you are ready to implement screening (check your jurisdiction for effectiveness and requirements) and to direct all appropriate persons so as to insulate and protect any confidences that the incoming LAA may have, thereby preventing any disqualification and disciplinary risk.

### *The Ethics Lawyer*

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## About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 125 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to [mark.hinderks@stinson.com](mailto:mark.hinderks@stinson.com).

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.