

# PROPOSED AMENDMENT OF RULE 1.10 OF THE MICHIGAN RULES OF PROFESSIONAL CONDUCT

## Issue

Should the State Bar of Michigan submit to the Michigan Supreme Court a request to amend Rule 1.10(a) of the Michigan Rules of Professional Conduct (MRPC) to add an exception to the imputed disqualification rule for certain conflicts arising from MRPC 1.7(b) (the so-called “material limitation” conflict rule)?

RESOLVED, that the Representative Assembly approves of the proposed amendment to MRPC 1.10(a) as follows:

### **Rule 1.10. Imputed Disqualification: General Rule.**

(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, 1.8(c), 1.9(a), or 2.2, unless the prohibition is based on a material limitation under Rule 1.7(b) due to the disqualified lawyer’s personal beliefs, and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm. If a lawyer leaves a firm and becomes associated with another firm, MRPC 1.10(b) governs whether the new firm is imputedly disqualified because of the newly hired lawyer’s prior services in or association with the lawyer’s former law firm.

(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, is disqualified under Rule 1.9(b), unless:

- (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer, and not currently represented by the firm, unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) 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.

**Comment:**

*Definition of "Firm."*

For purposes of these rules, the term "firm" includes lawyers in a private firm and lawyers employed in the legal department of a corporation or other organization or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

*Principles of Imputed Disqualification.*

The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves or has recently moved from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

The rule in paragraph (a) does not prohibit representation when neither questions of client loyalty nor protection of confidential information are presented, despite a disqualified lawyer's material limitation conflict due to that lawyer's personal beliefs. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such

as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did as a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect.

Rule 1.10(c) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c), unless the provisions of this rule are followed.

### **Proponent**

The Standing Committee on Professional Ethics presented by Chair Edward Hood, Clark Hill PLC, 500 Woodward Ave, Ste 3500, Detroit MI, 48826, (313) 965-8591, [ehood@clarkhill.com](mailto:ehood@clarkhill.com).

### **Synopsis**

The current version of MRPC 1.10 is often impractical to implement and may deprive clients of counsel of their choice. It is virtually impossible for larger law firms and legal departments to verify that every lawyer in the organization has no material limitation conflict under Rule 1.7(b) in representing a specific client due to each lawyer's personal beliefs. Even where such conflicts are recognized, imputed disqualification could deprive a client of counsel of the client's choice if an entire firm must be disqualified because a single lawyer in the firm has an aversion to the client's cause (even if that disqualified lawyer will have no involvement in the matter). Under the proposed rule, clients remain protected because the exception ensures that they are represented by lawyers with no material limitation conflict. The proposed comment is derived substantially from paragraphs [3] and [4] of the ABA Model Rule 1.10, but modified to clarify that the exception applies only to a disqualified lawyer's personal beliefs and not to other material limitation conflicts such as a lawyer's economic interests, or responsibilities to another client or to a third person. The proposed comment also provides useful guidance to law firms that others in the firm are not prohibited from involvement in a matter even when nonlawyer personnel, or lawyers based on events prior to becoming lawyers are prohibited from involvement, as long as screen(s) are appropriately implemented.

### **Background**

The proposed amendment is similar to ABA Model Rule of Professional Conduct 1.10(a)(1), but limited to material limitation conflicts due to a lawyer's personal beliefs.

**Opposition**

None known.

**Prior Action by Representative Assembly**

None.

**Fiscal and Staffing Impact on State Bar of Michigan**

None known.

**STATE BAR OF MICHIGAN POSITION**

**By vote of the Representative Assembly on September 19, 2025**

Should the Representative Assembly adopt the above resolution and submit to the Michigan Supreme Court a request to amend Rule 1.10(a), and the associated comments of the Michigan Rules of Professional Conduct (MRPC) to add an exception to the imputed disqualification rule for conflicts arising from MRPC 1.7(b) (the so-called “material limitation” conflict rule) due to a disqualified lawyer’s personal beliefs, where the disqualified lawyer has no involvement in the matter and there is no significant risk that the remaining lawyers in the firm will be materially limited in representing the client?

- (a) Yes
- or
- (b) No