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No Law Firm Lawyer Is an Island: Imputed Conflicts under RPC 1.10(a)

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With apologies to 17th Century English poet John Donne, when it comes to law firm conflicts, "no law firm lawyer is an island." By that I mean that under RPC 1.10(a), which is sometimes called the "firm unit rule," one law firm lawyer's conflict is ordinarily imputed to the lawyer's entire firm. As lawyers' practices have grown more specialized, they sometimes assume that if they do not personally have a conflict, they can simply go on about their business. In the law firm context, however, we are decidedly not "islands" and imputed conflicts can have important ramifications for both the individual lawyers involved and the firm as a whole. In this column, we'll first survey RPC 1.10(a) and then turn to its implications for law firm risk management.

The Rule

RPC 1.10(a) reads:

> 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 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or on Rule 1.7(a)(3) and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

RPCs 1.7 and 1.9 address, respectively, current and former client conflicts—and, therefore, sweep virtually all conflicts within the accompanying imputation. The "personal interest" exception is narrower than it sounds. OSB

Formal Opinion 2005-91 (rev 2016) notes that it applies to things like political views and not matters that involve a lawyer's financial interests that are tied to the lawyer's firm. Similarly, RPC 1.7(a)(3) deals with conflicts arising when opposing counsel is a lawyer's parent, spouse or child.

RPC 1.8, which is entitled "Conflict of Interest: Current Clients: Specific Rules," is generally considered a collection of specific instances of "material limitation" conflicts under RPC 1.7(a)(2). The bankruptcy court in *In re Smith-Canfield*, 2011 WL 1883833 (Bankr D Or May 17, 2011) (unpublished), for example, made this point in ordering a lawyer to disgorge his fees as a sanction for an unwaived conflict under both RPCs 1.7(a)(2) and 1.8(a) stemming from a business transaction with a client. Moreover, RPC 1.8 includes its own imputation provision—RPC 1.8(k)—that imputes its collection of conflicts to the firm, except RPC 1.8(j) that addresses romantic relationships with clients.

RPC 1.10(a) is neither new nor novel. Imputed conflicts were handled similarly under former Oregon Disciplinary Rule 5-105(G) and the current Oregon rule is patterned generally on its ABA Model Rule counterpart. RPC 1.10(a) also echoes the principle from malpractice case law that law firms are ordinarily vicariously liable for their lawyers' legal work. RPC 1.0(d), in turn, defines the

term “law firm” broadly to include all lawyers who are practicing together as a single unit regardless of the statutory form under which the firm is organized.

Individual lawyers within a firm representing conflicting interests without appropriate waivers are subject to regulatory discipline. *In re Schmeits*, 12 DB Rptr 195 (Or 1998), and *In re Vaughn*, 12 DB Rptr 179 (Or 1998), for example, involved law firm partners who were each disciplined for taking the opposing sides of a business transaction. RPC 1.10(a) is also frequently cited in analyzing whether a law firm should be disqualified for potential conflicts arising from the work of individual firm lawyers, with *Roberts v. Legacy Meridian Park Hosp., Inc.*, 2014 WL 294549 at *17 (D Or Jan 24, 2014) (unpublished), a local example.

Risk Management Implications

Because in most situations one law firm lawyer’s conflict will be imputed to the firm as a whole, all the firm’s lawyers play a role in avoiding “bad things” happening to the firm as a result of a lawyer’s conflict. Two of the primary tools of law firm risk management loom large in this effort: running thorough conflict checks and routinely using engagement agreements. A Seattle federal court disqualification ruling with Portland overtones offers a telling illustration of both.

In *Atlantic Specialty Insurance Company v. Premera Blue Cross*, 2016 WL 1615430 (WD Wash Apr 22, 2016) (unpublished), a lawyer in the Portland office

of a law firm took on a coverage case for an affiliate of a large insurance group in federal district court here. Although the affiliate sent the Portland lawyer "corporate counsel guidelines" containing a list of related companies that included a provision to the effect that representation of the affiliate constituted representation of the entire insurance group, the Portland lawyer did not enter the other affiliates in the firm's conflict system or send the affiliate an engagement agreement limiting his representation to that specific entity. Later, the firm's Seattle office took on a separate insurance coverage case in federal court there for a longtime corporate client against another affiliate of the same insurance group. The carrier moved to disqualify the law firm for a multiple client conflict because the Oregon matter was still ongoing. The court in Seattle granted the motion. In doing so, the judge noted that the law firm had both a sophisticated conflict system and standard form engagement agreements—but the Portland lawyer did not take advantage of either. The result starkly illustrates that a firm is more than a loose collection of individual islands.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, risk management and attorney-client privilege issues for lawyers, law firms and corporate and governmental legal departments throughout the Northwest. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is a

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