

## Opinion 2005-1

Synopsis: In the absence of the consent of both parties, a law firm may not continue to represent a client in pending litigation if the firm hires an attorney from a firm representing an opposing party in that litigation.

Facts: Attorney A works at Firm X which represents a client involved in an active dispute with a client of Firm Y. Attorney A is leaving Firm X, and has been offered a position at Firm Y. The client represented by Firm Y consents, and Firm Y could wall Attorney A off from any involvement in the matter. Nevertheless, the client of Firm X does not consent.

Analysis: There are equitable reasons to consider the hardship Attorney A may have in assuming employment by Firm Y because of the lack of consent by the clients of both Firm X and Y. However, in Vermont, the Rules of Professional Responsibility plainly forbid the proposed switch in firms unless both clients consent, placing a higher value on the client's right to loyalty from its attorney than the attorney's employment prospects. Specifically, Rule 1.7 provides:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

In addition, Rule 1.9(a) which would apply after Attorney A made the switch provides:

(a) a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

Thus, Attorney A would clearly be prohibited from switching representation of one client to another in his or her individual practice. Rule 1.10 (a) imputes the same provisions of Rule 1.7 to both Firm X and Firm Y. "(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 or 2.2." If the clients of both firms do not consent after consultation, then Attorney A may not switch firms without violating the Rules. Another option for Firm Y if it wants to hire Attorney A and the consent of Firm X's client cannot be obtained is to withdraw from representing the client involved in the disputed matter.