

## Opinion No. 2005-2

### SYNOPSIS

**(1.) The requesting attorney, who is general counsel to a state agency, should not share any information obtained in the course of representing the agency with an attorney whose firm represents an opposing party in any matter to which the agency is a party.**

**(2.) The requesting attorney should not personally participate, directly or indirectly in any active matter in which the requesting attorney's spouse is involved as an attorney on behalf of the opposing party.**

#### Facts

The requesting attorney is employed as general counsel to a governmental agency that from time to time, engages in litigation or regulatory matters with parties that are represented by the law firm in which the attorney was formerly a co-owner and head of its litigation group. The requesting attorney's spouse is a part-time member and co-owner of that same law firm. The spouse, on occasion, may participate directly on behalf of firm clients in matters involving the state agency; or on other matters not involving the agency but on behalf of clients whom a member of her firm represents in an agency related matter.

The requesting attorney does not intend to participate in any matters on behalf of the agency if the spouse is personally representing another party in a matter involving the agency; and asks whether this personal disqualification avoids a conflict of interest under the Vermont Rules of Professional Conduct

#### Applicable Rules of Professional Conduct

**Rule 1.6 (a) Confidentiality of Information:** A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation ....”

**Rule 1.8(i) Conflict of Interest:** “ A lawyer related to another lawyer as...spouse shall not represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship. The comment to this Rule notes: “Paragraph (i) applies to lawyers who are in different firms...The disqualification ... is personal and is not imputed to members of firms with whom the lawyers are associated.”

#### Discussion

### Confidentiality

It is clear under Rule 1.6 (a) that neither the requesting lawyer nor the attorney spouse may reveal to each other any information relating to their representations gained in lawyer-client relationships with their respective clients.

### Conflict of Interest

As for actual or potential conflicts of interest that may arise because of the relationship between the requesting attorney and spouse, Rule 1.8(i) limits disqualification to matters in which both of these attorneys are personally involved. In a case in which both the law firm and the agency are participating, there will be no imputed conflict unless both of the related attorneys are involved.

With respect to the requesting attorney, as general counsel to the agency, it is important to establish safeguards, including a screening protocol within the agency, to assure that the general counsel is not involved either directly or in a supervisory role in discussions involving any matter in which a party is represented by the subject law firm and the attorney spouse is personally involved on behalf of the law firm.