

Opinion 2005-3

Synopsis

When a law firm is retained by a client who previously had a case before a judicial officer and where the judicial officer was subsequently employed by the firm but has since left the firm, the firm is not required to obtain waivers of conflict of interest from opposing parties, assuming that the law firm has not obtained from the judicial officer any information about the opposing party's case.

Facts:

The requesting law firm hired a former judicial officer, who has since left the law firm. While the former judicial officer was at the firm, the firm instituted a procedure to obtain a written waiver of conflict of interest from opposing parties whenever the judicial officer had been involved as a judicial officer in the case of a client seeking to retain the firm, even if the judicial officer's participation was limited to signing a stipulated order.

The law firm requests an opinion as to whether it needs to continue obtaining waivers from opposing parties in connection with the representation of new clients who retained the firm after the judicial officer left the firm's employment. The firm also requests an opinion as to whether it must still seek a waiver in a case where the client was previously represented by another law firm, the former judicial officer was involved in the client's case while a judicial officer and the client discharged his or her former law firm and engaged the requesting law firm.

We are assuming that the former judicial officer did not leave any files at the requesting law firm concerning any of the matters the judicial officer presided over while acting as a judicial officer and that the requesting law firm has no knowledge acquired from the former judicial officer.

Applicable Rules of Professional Conduct

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 or 2.2.

(b) 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.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

Rule 1.12. Former Judge or Arbitrator

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person, unless all parties to the proceeding consent after consultation.

* * *

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter 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

Discussion

We assume that the requesting law firm has no knowledge gained from the former judicial officer nor access to any of the former judicial officer's files concerning cases presided over while serving as a judicial officer. With that understanding, the former judicial officer's departure from the firm has removed any conflict of interest issues that existed while the law firm employed the former judicial officer. Rule 1.12 prohibits a former judicial officer from representing a client in a matter in which the former judicial officer participated personally as a judicial officer, unless all parties to the proceeding consent. The procedures adopted by the requesting firm while the former judicial officer was employed as a firm attorney appear to have satisfied that requirement.

Now that the judicial officer has left the firm's employ, the conflict provisions of Rule 1.12 no longer apply directly, but must be reviewed in connection with other Rules governing conflict. Rule 1.11 contains conflict rules applicable to successive government – private employment. We do not believe that this Rule applies to judicial officers given the more specific provisions of Rule 1.12; but Rule 1.11 applies only while the former

public officer (here, arguably, the former judicial officer) is involved personally or through a law firm. That circumstance no longer exists because the former judicial officer has left the firm.

Conclusion:

The requesting law firm does not need to continue obtaining waivers from opposing parties in matters where the former judicial officer and former firm attorney was involved in the former parties' cases as a judge. However, waivers should be obtained with respect to clients retained while the former judicial officer was associated with the firm if the former judicial officer had any involvement with the client while serving as a judicial officer.