

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey



OPINION 743

**RPC 1.10(a) – Imputing Conflicts of Interest
That Are Based on a Personal Interest of the
Lawyer**

The Advisory Committee on Professional Ethics received an inquiry regarding a law firm that was retained to advise a client entity in a commercial loan refinancing. The client entity is fully owned by a parent limited liability company that has two members who each own equal shares. A shareholder in the law firm is one of the two members of the parent company. The Committee found that the lawyer with the financial stake has a conflict of interest based on a personal interest of the lawyer, Rule of Professional Conduct 1.7(a)(2), and that the affected lawyer's conflict of interest is imputed to the firm under Rule of Professional Conduct 1.10(a).

Rule of Professional Conduct 1.7 provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

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(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Rule of Professional Conduct 1.7(a)(2) conflicts not involving a public entity may be waived if the client gives informed consent, with certain exceptions. RPC 1.7(b)(1).

The lawyer in the firm who owns 50% of the client entity has a personal financial stake in the legal services to be provided by the firm to the client. This is a "personal interest of the lawyer" within the meaning of Rule of Professional Conduct 1.7(a)(2). In re Mason, 244 N.J. 506 (2021). A lawyer's professional judgment, when advising a client in a financial transaction, could be influenced by the lawyer's interest as a stakeholder in the business. "When a lawyer has a personal economic stake in a business deal, he must see to it that his client understands that his objectivity and his ability to give his client his undivided loyalty may be affected." In re Wolk, 82 N.J. 326, 333 (1980); see also ACPE Opinion 462 (1980) (lawyers may serve on a close corporation's board of directors while concurrently representing the corporation in litigation or other business matters, but it is advisable to first obtain "informed consent of all persons having a financial interest in the corporation"). It is well-established that lawyers who have a personal financial interest in a client's business have a conflict of interest.

Conflicts of interest generally are imputed to all other lawyers in the law firm. Rule of Professional Conduct 1.10(a) provides:

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

As the American Bar Association explained in the comments to Model Rule of Professional Conduct 1.10:

[2] 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)(1) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(a)(2) and 1.10 (b).

[3] The rule in paragraph (a) does not prohibit representation when neither questions of client loyalty nor protection of confidential information are presented. 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.

See also Restatement of the Law – The Law Governing Lawyers, § 125 comment g (American Law Institute 2000) (noting that personal interest conflicts may not be known to the other lawyers in the firm or be uncovered by a conflict-checking system; further, “personal interests of a lawyer may be idiosyncratic or otherwise of such a kind that it is improbable that affiliated lawyers would be impaired in their representation of clients due to such interests”).

The exception for imputing “personal interest” conflicts in Rule of Professional Conduct 1.10(a) is narrow and generally includes only interests arising due to family relationships or personal beliefs, not business or investment interests. See Michels, K., New Jersey Attorney Ethics, § 24:3-1(a), p. 618 (Gann 2022) (the ABA comments suggest that the RPC 1.10(a) exception for imputing personal conflicts “does not apply when the affected lawyer’s interest is pecuniary or proprietary”). Family-based or belief-based personal interests ordinarily are not considered to present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm. Conflicts arising from a lawyer’s personal business interests –

particularly when those business interests affect the client's objectives of legal representation – ordinarily would present a significant risk of materially limiting the representation of the client by the other lawyers in the firm. See In re Gilman, 184 N.J. 298 (2005) (business interest of partner in firm presented a conflict that is imputed to other lawyers in the firm).

A lawyer who owns 50% of the client entity has a personal conflict of interest pursuant to Rule of Professional Conduct 1.7 when representing that client in a financial transaction. This investment interest of the lawyer in the client entity could materially and adversely impair the representation of the client by the remaining lawyers in the firm. The other lawyers in the firm would be aware that their colleague has a personal financial interest in the client's transaction. Therefore, the conflict is imputed to the firm under Rule of Professional Conduct 1.10(a). Lawyers must obtain consent of other business owners to waive the conflict when a lawyer has a financial stake in a client entity.

Most personal interests that present concurrent conflicts of interest under Rule of Professional Conduct 1.7(a)(2) involve lawyers representing separate clients with adverse interests when those lawyers are related as husband and wife, parties to a civil union, parent and child, or siblings, or have nonmarital cohabiting relationship. See ACPE Opinion 600 (July 1987). Generally, if the lawyer handling the case has a close relationship with a lawyer on the other side (even when the lawyer on the other side is not handling the case for the adverse client but is merely a lawyer with the firm), the relationship must be disclosed to the client and the client must provide informed consent to cure the conflict. Ibid.

If, however, the lawyer with the relationship is not handling the case, the conflict is not likely to materially and adversely impair the representation of the client by the remaining lawyers in the firm. Ibid. This personal interest conflict generally is not imputed to the firm

under RPC 1.10(a), though the affected lawyer should be screened from the matter. Ibid. In this case, the client need not be informed of the relationship or provide consent to a conflict. Ibid.

Accordingly, when a lawyer has a financial interest in the client entity, the lawyer has a conflict of interest based on a personal interest, Rule of Professional Conduct 1.7(a)(2), and the affected lawyer's conflict of interest ordinarily is imputed to the firm under Rule of Professional Conduct 1.10(a). The exception for imputing "personal interest" conflicts in Rule of Professional Conduct 1.10(a) is narrow and generally includes only interests arising due to family relationships or personal beliefs, not business or investment interests.