



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1036 (11/25/14)

Topic: Law Firm; Legal Assistance Organization

Digest: The local sections of a national legal services project are considered a single law firm for conflict of interest and confidentiality purposes where, among other things, the local sections share a single case management system and there is supervision across the local sections.

Rules: 1.0(h), 1.6, 1.10. 1.10(e)

FACTS

1. The inquirer practices law with a national law project focusing on immigration matters that provides free legal services to non-citizens in several states. A number of attorneys work under the umbrella of the national organization, conducting clinics in churches around the country. The national board provides periodic financial grants and programmatic support, such as training of volunteers. The national board is incorporated, but each local section is also independently incorporated and receives local funding. All of the local sections share the same logo, the same insurance carrier and a group list serve. Additionally, the local sections share a single case management system that enables each attorney to have access to the information of all of the project's clients in all sections. The national board designates several lawyers as "Regional Attorneys" to supervise the attorneys in several local sections. The inquirer asks whether the nationwide network of local sections is a single law firm for confidentiality and conflict of interest purposes.

QUESTION

2. Where the local sections of a national legal services project are separately incorporated, but share the same logo, the same insurance carrier, a group list serve, and a single case management system, and where the national board designates regional attorneys who supervise offices in multiple states, are the local sections a single law firm for purposes of the New York Rules of Professional Conduct, including for conflict of interest and confidentiality purposes?

OPINION

3. Rule 1.0(h), in the "Terminology" section of the New York Rules of Professional Conduct (the "Rules"), provides that a "firm" or "law firm" "includes, but is not limited to, a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers engaged in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization." Some groups may constitute a firm for the purposes of some of the Rules but not others. *See* Comment [2] to Rule 1.0 ("a group of lawyers could be regarded as a firm for

purposes of determining whether a conflict of interest exists but not for application of the advertising rules.”). Where a legal services organization consists of more than one component or section, the entire organization may constitute one single firm or each component may constitute a separate firm, depending on the organizational structure. *See* Comment [4] to Rule 1.0. Determining whether a group of lawyers is a single firm “is a fact-intensive inquiry.” N.Y. State 881 (2011).

4. As to the facts that are relevant to that inquiry, Comment [2] to Rule 1.0 points to (1) whether the group presents itself to the public in a way that suggests it is a firm; and (2) whether the lawyers in the group have mutual access to information concerning the clients they serve. Our ethics opinions focus on similar facts, placing particular weight on access to client information. Thus, in N.Y. State 794 (2006), we concluded that the various divisions of a law school clinic constituted a single firm for purposes of the conflict rules where, even though each division maintained computer databases that were inaccessible to other divisions, the clinic shared common office and file space.

5. Our opinions also look to the independence of the lawyers in assessing whether a group of lawyers is a single firm. Thus, in N.Y. State 914 (2012), we concluded that the members of a panel of lawyers established to provide legal assistance to clients who had conflicts with the local Legal Aid office did not consist of a single firm. We focused on the independence of the members of the panel, noting that “[n]either the project nor its lawyers would exercise any supervision or control over the legal services provided by conflict panel volunteers.”

6. Under the above principles, it is clear that the group of lawyers at issue in this inquiry is a single law firm for conflict and confidentiality purposes. Some of the factors present here would not, in-and-of-themselves, render the project a single firm, *see* N.Y. State 643 (1993) (shared liability insurance not sufficient for members of a panel to constitute single firm). Nevertheless, the facts taken together lead to only one conclusion about the status of the inquirer’s entity. The factors that most strongly support this conclusion are (i) the project’s use of a single case management system with shared access and (ii) the supervisory structure of the project. As currently constituted, the project’s case management system permits all attorneys access to all confidential information about all matters in all sections of the project. The system provides no reliable means for confining confidential information to any one office. This joint access to confidential information can pass muster under Rule 1.6 only if those with shared access are treated as a single firm. *See* Rule 1.6, Cmt. [5] (“lawyers in a firm may, in the course of the firm’s practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers”). If each of the project’s various sections were treated as a separate firm, then Rule 1.6(a) would prohibit one section from sharing confidential information with lawyers from another section absent client consent or another exception to the duty of confidentiality. A legal services organization, however, must consider whether a request for such consent would be coercive. *See* N.Y. State 490 (a legal services staff should be particularly sensitive to any element of submissiveness on the part of their indigent clients and such requests should be made only when the staff is satisfied that the clients could refuse to consent without any sense of guilt or embarrassment).

7. Even if the project’s case management system compartmentalized confidential

information by section, the regional supervision of lawyers from multiple local sections would prevent us from treating each section as a separate firm. Because each regional supervisor oversees local lawyers, the local lawyers are not acting independently, *cf.* N.Y. State 914, *supra*, and the supervisor gains access to confidential information from multiple local sections. This supervisory structure is incompatible with treating each local section as a single firm.

8. Since we find that the entire national project is a single firm for purposes of the Rules, the firm must comply with Rule 1.10 (Imputation of Conflicts of Interest), which provides that conflicts arising under Rules 1.7, 1.8 and 1.9 are imputed to all lawyers "associated in a firm." As part of a firm's Rule 1.10 obligations, it must implement and maintain a conflict-checking system in accordance with Rule 1.10(e) as follows:

A law firm shall make a written record of its engagements, at or near the time of each new engagement, and shall implement and maintain a system by which proposed engagements are checked against current and previous engagements when:

- (1) the firm agrees to represent a new client;
- (2) the firm agrees to represent an existing client in a new matter;
- (3) the firm hires or associates with another lawyer; or
- (4) an additional party is named or appears in a pending matter.

9. Of course, lawyers who practice primarily in a firm's office that is in a jurisdiction other than New York are not bound by New York's Rule 1.10. But, as a practical matter, the lawyers practicing in the firm's New York office cannot comply with Rule 1.10 unless the entire firm is part of a single conflict-checking system.

CONCLUSION

10. The local sections of a national legal services project are considered a single law firm for conflict of interest and confidentiality purposes where, among other things, the local sections share a single case management system and regional attorneys supervise lawyers in multiple local sections.

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