NEW YORK STATE BAR ASSOCIATION
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New York State Bar Association
Committee on Professional Ethics

Opinion 1285 (09/29/2025)

Topic: Conflicts of Interest; Imputation of Conflicts of Interest

Digest: A lawyer who is employed by a private law firm that represents various municipalities in New York State may accept appointments as assigned counsel to represent indigent persons in criminal court provided the lawyer complies with the New York Rules of Professional Conduct regarding conflicts of interest. If the law firm represents a municipality that is or was a party to a potential assignment as appointed counsel, then a conflict of interest may exist, and any conflict will be imputed to the entire law firm. If the conflict is a waivable conflict and the parties wish to proceed with the representation, then the personally conflicted lawyer and the law firm must obtain informed consent to the conflict, confirmed in writing, pursuant to Rule 1.7.

Rules: 1.7; 1.9; 1.10; 6.5

FACTS:

1. The inquirer is an associate attorney employed by a law firm in New York State organized as an LLP that has law offices throughout New York State and elsewhere (the "LLP"). The LLP represents several municipalities in New York State in various matters.

2. Prior to joining the LLP, the inquirer was an assistant public defender for a county in New York State, and also provided legal representation to indigent clients in accordance with New York County Law Article 18-B as assigned counsel ("Assigned Counsel"). Article 18-B requires counties to provide criminal defense representation to qualified indigent persons. The inquirer provided these services as Assigned Counsel through his own law firm (the "PLLC"), which he created to do such work. Inquirer would like to continue assisting the indigent population of New York either through work as an Assigned Counsel or by representing indigent clients through a panel pursuant to the federal Criminal Justice Act ("CJA") while also remaining an employee of the LLP.

3. As background, we provide the following information regarding appointments as Assigned Counsel and participating in the CJA panel.

4. New York law requires each county to establish a plan to provide attorneys for people who are entitled to legal representation in criminal and family matters but who cannot afford to pay for counsel.[1] A county may fulfill its obligations under Article 18-B by appointing a public defender, by furnishing counsel through a private legal aid bureau or society designated by the county, through a bar association plan in which the services of private counsel are rotated and coordinated

[1] N.Y. County Law§ 722.

by an administrator, or through a combination of any of the foregoing alternatives.[2] Each county has a process for determining which attorneys are chosen to serve as an Assigned Counsel and how matters are assigned to eligible attorneys.

5. The federal CJA panel consists of attorneys who are authorized to be appointed to represent indigent defendants in federal criminal cases in which the Federal Defender office in that district has a conflict.[3] Each district in New York has different rules relating to an attorney's service on a CJA panel. Those rules cover, among others, the process for selecting CJA panel attorneys, the appointment of CJA counsel in individual cases, compensation of CJA counsel, and funding for experts and other services in CJA cases.

6. The LLP is willing to permit the inquirer to perform criminal defense work for indigent clients as Assigned Counsel or as a member of a CJA panel provided his services comply with the New York Rules of Professional Conduct (the "Rules"), specifically with regard to any conflicts between his criminal defense work and the LLP's representation of various New York municipalities.

QUESTION:

7. May an associate attorney with a private, multi-service law firm that represents various municipalities in New York State provide legal services as part of a New York County's Assigned Counsel plan or by serving on a federal CJA panel?

OPINION:

8. As an initial matter, this Committee's jurisdiction is limited to issues arising under the Rules, and we express no view with respect to any statute, ordinance, municipal ethics code, or other authority outside the Rules that may bear upon the present inquiry.

9. We assume for purposes of this inquiry that the inquirer is qualified to serve on Article 18-B and CJA panels. Whether the inquiring attorney may take on any particular representation as an Assigned Counsel or as part of the CJA panel while associated with the LLP will depend on whether his engagements would (or do) create any conflicts of interest under Rules 1.7, 1.9, and 1.10. Specifically, the analysis will turn on which municipalities the LLP represents (or has represented in the past) and whether the municipalities are involved in the cases that are assigned to the inquirer. If a potential assignment involves a municipality that the LLP currently represents or has formerly represented, then a conflict of interest may arise under the Rules, depending on how the interests of the prospective client in the criminal case relate to the interests of the municipality in that matter.

10. The general provisions addressing conflicts of interest relating to current clients are governed by Rule 1.7(a), which prohibits a lawyer from representing a client if a reasonable lawyer would conclude that (i) the representation will involve the lawyer in representing differing client interests, or (ii) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests. A lawyer with a conflict of interest as defined by Rule 1.7(a) may not represent a client unless the conflict is both waivable and properly waived by the client under Rule 1.7(b).

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[2] *See* https://www.nycourts.gov/reporter/webdocs/18b.htm.
[3] *See* https://www.federaldefendersny.org/cja-resources.

11. "Differing interests" are defined in Rule 1.0(f) to include "every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse or other interest." The lawyer is expected to be loyal, protect client confidences, and provide independent judgment. "Differing interests" can arise even if the lawyer does not represent the two clients in the same proceeding. *See* Rule 1.7, Cmt. [6] ("absent consent, a lawyer may not advocate on one matter against another client that the lawyer represents in some other matter, even when the matters are wholly unrelated").

12. Until the matter-specific information is evident, it will be unknown whether the inquirer would be serving "differing interests" within the meaning of Rule 1.7(a)(1) and Rule 1.0(f). If, however, the inquirer takes an assignment that involves a charge against his client, and the charging party is a municipality that the LLP represents, that would clearly be representing "differing interests" within the meaning of Rule 1.7(a)(1) even if the LLP represents the municipality in an unrelated matter.

13. As stated above, whether Rule 1.7(a)(1) applies in any particular matter would depend on the specific facts and circumstances. But by way of general guidance, it is the Committee's view that a conflict would arise if the inquirer were to represent a client in any matter in which any municipal client of the LLP plays a meaningful role. We believe that a municipal client would play a "meaningful role" in matters in which the interests of the inquirer's potential indigent client conflict with the interests of the municipality, as well as, potentially, in certain other matters in which the municipality does not have a direct interest but is nevertheless involved in an important way.

14. This conclusion is consistent with guidance previously articulated in N.Y. State 1272 (2024) and N.Y. State 1074 (2015). In both opinions, the Committee concluded that whether a conflict exists is dependent on the facts and circumstances particular to that representation and whether the opposing party had a "meaningful role."

15. Notwithstanding the existence of a conflict of interest under Rule 1.7(a), the inquirer may seek to represent a client under Rule 1.7(b) if:

> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
> (2) the representation is not prohibited by law;
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
> (4) each affected client gives informed consent, confirmed in writing.

Importantly, and as it relates to Rule 1.7(b)(4), when the lawyer seeks consent from a client who is receiving free legal services, the lawyer must consider whether such consent would be freely given. *See* N.Y. State 811 (2007) ("we have noted that it is often difficult to obtain informed consent to waiver of a conflict from indigent clients who have been assigned counsel").

16. Whether the conflict is waivable will again require the analysis of the specific facts and circumstances of the potential representation, as well as the above factors, to determine whether the conflict is waivable and can be properly waived with informed consent, confirmed in writing.

17. The inquirer and his LLP should also be mindful of whether Rule 1.9 would prohibit any representation in matters involving municipalities that are no longer clients but are former clients. Rule 1.9(b) provides that unless the former client gives informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client (1) whose interests are materially adverse to that person; and (2) about whom the lawyer had acquired information protected by Rules 1.6 or Rule 1.9(c) that is material to the matter.

18. It is important to clarify that whether the inquirer provides this potential representation under the LLP or the PLLC does not matter because any conflicts of interest from the LLP's representation of the various municipalities will be imputed to the inquirer. Rule 1.10(a), New York's main rule on imputation of conflicts, which was amended by the Appellate Divisions, effective January 1, 2025, provides:

> 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 Rule 1.7, 1.8 or 1.9, except as otherwise provided therein unless:
>
> (1) the prohibition is based on a lawyer's own financial, business, property or other personal interests within the meaning of Rule 1.7(a)(2), and
>
> (2) under the circumstances, a reasonable lawyer would conclude that there is no significant risk that the representation will be materially limited or that the independent professional judgment of the participating lawyers in the firm will be adversely affected.

19. The exception to Rule 1.10(a)(2) does not apply in this situation. Here, the inquirer, as an associate attorney of the LLP, is clearly "associated" with the firm, and all conflicts of interest stemming from the LLP and arising under Rules 1.7, 1.8, or 1.9 will be imputed to the inquirer. *See* N.Y. State 876 (2004) (conflicts of interest will be imputed to all lawyers in all firms with which a lawyer is associated as a partner, associate or of counsel). *See also* Rule 1.0(h) ("'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 employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization").

20. Additionally, both this Committee and various New York courts have consistently stated that where a lawyer is "associated" with more than one law firm within the meaning of the imputation rule, all of the law firms with whom that lawyer is associated are ordinarily treated as one law firm for purposes of conflicts of interest. Accordingly, under Rule 1.10(a), all conflicts in *each* firm are imputed to all lawyers in *all* of the firms associated with a common lawyer, because all of those firms are treated as if they were a single firm.[4] For examples of two law firms treated as one, *see, e.g.*, N.Y. State 807 (2007) (lawyer working part-time at two firms); N.Y. State 794 (2006) (lawyer working at law firm and law school clinic); N.Y. State 793 (2006) (lawyer with "of

[4] Rule 1.10(a)(2) applies if the conflict is based on the lawyer's own financial, business, property or other personal interests within the meaning of Rule 1.7(a)(2).

counsel" relationship with two firms at the same time); N.Y. State 715 (1999) (contract lawyer for two firms); N.Y. State 388 (1975) (sole practitioner and member of partnership); N.Y. City 2000-4 (2000) (affiliated law firms); *Cinema 5, Ltd. v. Cinerama, Inc*., 528 F. 2d 1384 (2d Cir. 1976) (partner in two law firms). Thus, the inquirer cannot avoid his obligations under the Rules by doing any potential Assigned Counsel or CJA work under the PLLC in an attempt to assert independence from the LLP. Screening alone would not suffice to cure the imputed disqualification except as a condition of consent. *See* N.Y. State 1186 ¶ 26 (2020) ("Firewalls and screens cannot prevent imputation of a conflict under Rule 1.10(a)" unless the Rules provide otherwise).

21. In short, because their mutual association with the inquirer means that the LLP and PLLC are treated as "one firm" for conflicts purposes, the LLP and PLLC must have a system for checking conflicts throughout both firms, with any prospective LLP matter checked against the PLLC's records of client work and any prospective PLLC matter checked against the LLP's records of client work. In the event the development or use of such a system proves to be too burdensome for the inquirer and the LLP given the LLP's frequent representation of municipalities, we direct the inquirer to Rule 6.5, which relieves attorneys who participate in limited pro bono legal services programs from the customary conflict rules when providing short-term limited legal services under the auspices of a program sponsored by certain kinds of entities, including a court, government agency, bar association, or not-for-profit legal services organization. *See* Rule 6.5(a). Rule 6.5(a)(1) provides, in part, that a participating lawyer is required to comply with the conflict provisions of Rules 1.7, 1.8, and 1.9 "only if the lawyer has actual knowledge at the time of commencement of representation that the representation of the client involves a conflict of interest." Rule 6.5(a)(2) says that the lawyer is required to comply with the imputation provisions in Rule 1.10 "only if the lawyer has actual knowledge at the time of commencement of representation that another lawyer associated with the lawyer in a law firm is affected by Rules 1.7, 1.8 and 1.0." *See* N.Y. State 1012 ¶¶ 7-9 (2014) (discussing the Rule). Thus, Rule 6.5(a) imposes a less stringent standard on conflicts in the context of limited pro bono legal services.

CONCLUSION:

22. A lawyer who is employed by a private law firm that represents various municipalities in New York State may accept appointments as assigned counsel to represent indigent persons in criminal court provided the lawyer complies with the New York Rules of Professional Conduct regarding conflicts of interest. If the law firm represents a municipality that is or was a party to a potential assignment as appointed counsel, then a conflict of interest may exist, and any conflict will be imputed to the entire law firm. If the conflict is a waivable conflict and the parties wish to proceed with the representation, then the personally conflicted lawyer and the law firm must obtain informed consent to the conflict, confirmed in writing, pursuant to Rule 1.7.

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