

# Order

Michigan Supreme Court  
Lansing, Michigan

May 22, 2007

Clifford W. Taylor,  
Chief Justice

ADM File No. 2006-39

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly

Amendment of Rule 1.10  
of the Michigan Rules  
of Professional Conduct

Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

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By order dated November 14, 2006, this Court amended Rule 1.10 of the Michigan Rules of Professional Conduct, effective immediately. 477 Mich cxxii (Part 2, 2007). At the same time, the Court stated that it would consider at a future public hearing whether to retain the amendment. Notice and an opportunity for comment at a public hearing having been provided, the amendment of Rule 1.10 is retained. In addition, the following amendments are adopted, effective immediately.

[Additions are reflected by underline and deletions are marked by strikethrough.]

## Rule 1.10 Imputed Disqualifications: 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(a)–~~or (e)~~, or 2.2. If a lawyer leaves a firm and becomes associated with another firm, MRPC 1.10(b) governs whether the new firm is imputedly disqualified because of the newly hired lawyer's prior services in or association with the lawyer's former law firm.
- (b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, is disqualified under Rule 1.9(b), 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.
- (c) 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.
- (d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

Amendment of the last paragraph of the first staff comment: Rule 1.10(b)(c) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c), unless the provisions of this rule's provisions are followed.

Staff Comment: MRPC 1.10(a) requires that if a lawyer practicing alone is prohibited from representing a person in particular situations (including under MRPC 1.9, which prohibits representation if such representation would create a conflict of interest with a former client), then no lawyers associated with that attorney may represent such a client. The amendment of MRPC 1.10(a) removes a reference to a provision (MRPC 1.9[c]) that is unrelated to the question whether a lawyer is prohibited from representing a client. MRPC 1.9(c) prohibits a lawyer from using or revealing information gained during representation of a former client, and does not prohibit representation based on a conflict of interest. Thus, it is misplaced to use it as a basis for imputed disqualification in MRPC 1.10(a).

In addition, this order makes a correction to the reference to Rule 1.10 in the final paragraph of the current staff comment. That paragraph relates to application of the rule after a lawyer leaves a firm, which is covered by MRPC 1.10(c), and not to circumstances surrounding when a lawyer becomes associated with a firm, which is covered by MRPC 1.10(b).

The staff comment is not an authoritative representation by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 22, 2007

*Corbin R. Davis*

Clerk