feature

CONFLICT of INTERESTS:

Removing Disqualification by Screening

To date, there is no law in Florida to support a screening exception to imputed disqualification when a private lawyer transfers to a new firm.

The ABA recently amended the *Model Rules of Professional Conduct* to permit law firms to establish ethics screens for incoming lawyers who move laterally from one private firm to another, so that individual conflicts of interest that apply to the moving lawyer are not imputed to other lawyers in the new firm.

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Model Rule 1.10 (a) states that 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.

The Model Rules define screening, sometimes called "Chinese Wall," as "isolation of a lawyer from any participation in a matter through the timely imposition of procedures within the firm that are reasonably adequate . . . to protect information that the isolated lawyer is obligated to protect . . ."

The Florida Rules of Professional Conduct, Rule 4-1.10, do not permit screening to avoid imputed disqualification when a private lawyer transfers to a new firm. Case law in Florida provides no screening exception for lawyers. In *Edward J. DeBartolo Corp. v. Petrin,* 516 So. 2d 6 (Fla. 5th DCA 1987), the hiring law firm had established a screening procedure to ensure that no confidential information would be disclosed by the new attorney. But the court stated that a "Chinese wall or screening process is not a defense when a private attorney joins another private firm." In *Birdsall v. Crowngap, Ltd.,* 575 So. 2d 231 (Fla. 4th DCA 1991), the screening process was not sufficient to prevent disqualification. And in *Matter of Outdoor Products Corp.,* 183 B.R. 645 (Bkrtcy M.D. Fla. 1995), the court found the "Chinese Wall" although commendable, had not been adopted by Florida courts.

As for non-lawyer employees, Florida cases conflict on whether screening will be effective. The First, Second and Fifth District Courts of Appeal have accepted screening of a nonlawyer employee as a viable step to prevent imputed disqualification. *Stewart v. Bee-Dee Neon & Sings, Inc.,* 751 So. 2d 196 (Fla. 1st DCA 2000); *Esquire Care, Inc. v. Maguire,* 532 So. 2d 740 (Fla. 2d DCA 1988); *City of Apopka v. All Corners, Inc.,* 701 So. 2d 641 (Fla. 5th DCA 1997). *Stewart* noted that effective screening measures for nonlawyers "... should include admonishing the nonlawyer employee not to discuss the case with anyone in the hiring firm, restricting the nonlawyer employee from access to the computer and paper files related to the case, and prohibiting all attorneys and nonlawyer employees of the hiring firm from discussing the case with, or in the presence of, the nonlawyer employee." *Id.* at 209. The Third and Fourth Districts hold that screening is not a viable alternative to disqualification of nonlawyers. *First Miami Securities, Inc. v. Sylvia,* 780 So. 2d 250 (Fla. 3d DCA 2001); *Koulisis v. Rivers,* 730 So. 2d 289 (Fla. 4th DCA 1999).

Thus, Florida law firms may set up a screening process for nonlawyer employees when they come from other firms. To date, there is no law in Florida to support a screening exception to imputed disqualification when a private lawyer transfers to a new firm.

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