

Rule 1.10 Imputation Of Conflicts Of Interest: General Rule
(Commission's Proposed Rule Adopted on June 2 – 3, 2016 – Clean Version)

- (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 or 1.9, unless
 - (1) 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;* or
 - (2) the prohibition is based upon Rule 1.9(a), (b), or (c)(3) and arises out of the prohibited lawyer's association with a prior firm,* and
 - (i) the prohibited lawyer did not substantially participate in the same or a substantially related matter;
 - (ii) the prohibited lawyer is timely screened* [in accordance with Rule 1.0.1(k)] from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (iii) written* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; and an agreement by the firm* to respond promptly to any written* inquiries or objections by the former client about the screening procedures.
- (b) 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, 1.9(c), and Business and Professions Code § 6068(e) that is material to the matter.
- (c) A prohibition under this Rule may be waived by each affected client under the conditions stated in Rule 1.7.
- (d) The imputation of a conflict of interest to lawyers associated in a firm* with former or current government lawyers is governed by Rule 1.11.

Comment

[1] Paragraph (a) does not prohibit representation by others in the law firm* where the person* prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person* became a lawyer, for example, work that the person* did as a law student. Such persons,* however, ordinarily must be screened* from any personal participation in the matter. See Rules 1.0.1(k) and 5.3.

[2] Paragraph (a)(2)(ii) does not prohibit the screened* lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is prohibited.

[3] Where a lawyer is prohibited from engaging in certain transactions under Rules 1.8.1 through 1.8.9, Rule 1.8.11, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm* with the personally prohibited lawyer.

[4] The responsibilities of managerial and supervisory lawyers prescribed by Rules 5.1 and 5.3 apply to screening arrangements implemented under this Rule.

[5] Standards for disqualification, and whether in a particular matter (1) a lawyer's conflict will be imputed to other lawyers in the same firm* or (2) the use of a timely screen is effective to avoid that imputation, are also the subject of statutes and case law. See, e.g., Code of Civil Procedure § 128(a)(5); Penal Code § 1424; *In re Charlissee C.* (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]; *Rhaburn v. Superior Court* (2006) 140 Cal.App.4th 1566 [45 Cal.Rptr.3d 464].

**Proposed Rule 1.10 Imputation of Conflicts of Interest: General Rule
Synopsis of Public Comments**

TOTAL = XX **A = X**
D = X
M = X
NI = X

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
2016-32e	Law Professors (Zitrin)	Yes	A	1.10	The commission is to be commended for properly limiting screening relatively narrowly to the guidelines laid out in dicta in <i>Kirk v. First American Title Ins. Co.</i> , 183 Cal.App.4th 776 (2010).	No response required.

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED