

**Enduring Ethics Opinion
#186: Screening of Non-Lawyer Staff to Avoid Conflict**

In Ethics Opinion 186, the Commission addressed whether lawyers may use screening with respect to a non-lawyer assistant to avoid conflicts and as a means of fulfilling their duties under former M. Bar R. 3.13(c) “Responsibilities Regarding Non-lawyer Assistants.” We also addressed what “screening” means in such a context. Opinion 186 concluded that screening of non-lawyer staff employed by a law firm is generally permissible to avoid conflicts of interest presented by that staff. We noted that the imputed disqualification rule set forth in former M. Bar R. 3.4(b)(3)(i), by its express language, applied only to attorneys and did not extend to non-lawyer staff. We also concluded that the separate obligation of attorneys set forth in former M. Bar R. 3.13(c), which requires attorneys to “make reasonable efforts to ensure that a [non-lawyer assistant’s] conduct is compatible with the professional obligations of the lawyer,” did not require a firm to “impute unto itself ‘conflicts’ or other disqualifying issues presented by non-lawyer staff.” Instead, we advised that proper screening of non-lawyer staff would, in most instances, be sufficient to fulfill those obligations.

Like former M. Bar R. 3.4, Maine Rule of Professional Conduct 1.10, “Imputation of Conflicts-of-Interest: General Rule,” expressly applies only to attorneys and does not extend to non-lawyer staff. It is appropriate to note the enduring nature of Ethics Opinion #186 in light of Ethics Opinion #219 “Formal Ethics Opinion Regarding Lateral Transfers by Attorneys” and the recent amendment to 1.10(a). As noted in Opinion #219, M.R. Prof. Conduct 1.10(a)(2)(i) now expressly permits the use of screening to manage a conflict of interest caused by a lawyer’s change of firms, which is a departure from former M. Bar R. 3.4. The Maine Supreme Judicial Court amended Rule 1.10(a) in 2018 to conform to subsection (a) as currently written in the

ABA Model Rules and specifically “to adopt the screening protocols that apply to potential conflicts within a firm due to a lawyer’s former association with another firm.” Therefore, the Maine Rules of Professional Conduct now permit—with respect to both lawyers and non-lawyer staff—the use of effective screening to manage a conflict presented by a person moving between law firms, rather than prohibiting the lateral move entirely.

We reiterate here that attorneys have a duty under M.R. Prof. C. 5.3(b) to make “reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” As we discussed in detail in Opinion #186, attorneys must caution non-lawyer assistants “to be alert to all legal matters, including lawsuits, in which any client of the individual's former employer has an interest.” An attorney must also enact measures to shield non-lawyer staff from personal participation in such a matter and take additional steps as needed to avoid any violation by that person of a lawyer’s obligations under the Rules of Professional Conduct. There are also limited circumstances under which the conflict is of such a nature as to require disqualification or withdrawal, and the same rules would be implicated under the Maine Rules of Professional Conduct.