

Confidentiality Screens – Part I

Under the [Rules of Professional Conduct](#) (the “Rules”), in certain circumstances, lawyers are required to use confidentiality screens or other adequate measures to prevent the disclosure of one client’s confidential information to another lawyer or paralegal at the lawyer’s firm who is acting for another client. These situations are set out below.

Competing Clients under Separate Retainers – rule 3.4-5[3.1]

Where a law firm is approached to assist two or more clients in separate retainers who are competing at the same time for the same opportunity (for example, competing bids in a corporate acquisition or competing applications for a single licence), the firm must take several steps in order to accept both retainers. In such a situation, because a conflict of interest exists, the law firm must obtain express consent from both clients to act under rule 3.4-2. Since competing retainers of this kind are not joint retainers, information received can be treated as confidential and must not be disclosed to the client in the competing retainer. Different lawyers in the firm represent each client. In order to ensure that information from each client is kept confidential and not disclosed to the other client, the law firm must implement reasonable measures, including confidentiality screens, as discussed in rules 3.4-17 to 3.4-23 with any necessary modifications.

It is important to note that the competing retainer situation differs from a joint retainer scenario. Confidentiality screens are not permitted in a joint retainer because rule 3.4-5(b) does not permit treating information received in connection with the joint retainer as confidential so far as any of the joint clients are concerned (r. 3.4-5[3.1]).

Acting Against a Former Firm Client without Consent – rule 3.4-11

In the limited circumstances set out in the *Rules*, when a lawyer has acted for a former client and obtained confidential information relevant to a new matter, another lawyer in the lawyer’s firm may act in the new matter against the former client without the former client’s consent. In order to act in such cases, the *Rules* require that the law firm establish that it has taken adequate measures on a timely basis to ensure that there will be no risk of disclosure of the former client’s confidential information to the other lawyer having carriage of the new matter. Adequate measures include the use of confidentiality screens as described in the commentary to rule 3.4-20.

Short-Term Limited Legal Services to Pro Bono Client – rule 3.4-16.4

The limited nature of short-term *pro bono* services significantly reduces the risk of conflicts of interest. Accordingly, the lawyer is disqualified from acting for a client receiving short-term *pro bono* legal services only if the lawyer has actual knowledge of a conflict of interest in the same or a related matter. For example, a conflict of interest of which the lawyer has no actual knowledge but which is imputed to the lawyer because of the lawyer’s membership in or association or employment with a firm would not preclude the lawyer from representing the client seeking short-term *pro bono* services. In the provision of short-term *pro bono* legal services, the lawyer’s knowledge about conflicts is based on the lawyer’s reasonable recollection and information provided by the client in the ordinary course of the consulting with the *pro bono* provider regarding the short-term *pro bono* services.

Confidential information obtained by a lawyer representing a *pro bono* client (as defined in r. 3.4-16.2) will not be imputed to the lawyers, paralegals or others at the lawyer’s firm. As such, these individuals may

continue to act for another client adverse in interest to the *pro bono* client who is obtaining or has obtained short-term limited legal services, and may act in future for another client adverse in interest to the *pro bono* client. However, appropriate screening measures must be in place to prevent disclosure of confidential information relating to the *pro bono* client or to other persons at the lawyer's firm. These measures are set out in the commentary to rule 3.4-16.6[6] and rules 3.4-17 to 3.4-23 and their commentaries with necessary modifications.

Transferring Lawyer with Confidential Information Relevant to New Firm Matter – rule 3.4-20

Where a transferring lawyer actually possesses confidential information relevant to a matter respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must cease its representation of its client in the matter except in limited circumstances. The new law firm may not continue its representation unless the former client consents to the new law firm's continued representation of its client or the new law firm has taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring lawyer to any member of the new law firm and advised the lawyer's former client, if requested by the client, of the measures taken. Reasonable measures to ensure the non-disclosure of confidential information and some guidelines with respect to these measures are set out in rules 3.4-17 to 3.4-23 (in particular, in the commentary to rule 3.4-20[3]).