

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO THE
MAINE RULES OF PROFESSIONAL CONDUCT

2010 Me. Rules 03

Effective: March 1, 2010

All of the Justices concurring therein, the following amendments to the Maine Rules of Professional Conduct are hereby adopted to be effective on the date indicated above. The specific rules amendments are stated below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but it is not part of the amendment adopted by the Court.

1. Rule 1.10(e) of the Maine Rules of Professional Conduct is adopted to read as follows:

RULE 1.10 *IMPUTATION OF CONFLICTS-OF-INTEREST: GENERAL RULE*

.....

(e) If a lawyer or law student affiliated both with a law school legal clinic and with one or more lawyers outside the clinic is required to decline representation of any client solely by virtue of this Rule 1.10, this rule imposes no disqualification on any other lawyer or law student who would otherwise be disqualified solely by reason of an affiliation with that individual, provided that the originally disqualified individual is screened from all participation in the matter at and outside the clinic.

Advisory Note – February 2010

Rule 1.10 generally addresses conflicts of interest. The introductory section of the Rule, 1.10(a) states:

(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 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.

This is the general so called “one excluded, all excluded” rule that also prevailed under the former Code of Professional Responsibility, Rule 3 of the Maine Bar Rules. The general rule is, of necessity, subject to a number of exceptions. The new Rule 1.10(e), which was recommended by the Advisory Committee on Professional Responsibility, recognizes an exception to the general rule regarding imputation of conflicts of interest in the case of lawyers or law students affiliated with both a law school legal clinic and with one or more lawyers outside the clinic, such as through an internship or part-time employment. When such a lawyer or law student would be required to decline representation due to a conflict of interest, that conflict is not imputed to any other lawyer or law student affiliated with the disqualified individual, provided that the disqualified individual is screened from all participation in the matter involving a conflict of interest.

2. Rule 8.4 of the Maine Rules of Professional Conduct is amended to read as follows:

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or unlawful act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Maine Rules of Professional Conduct, the Maine Bar Rules or ~~other~~ law; or

- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or ~~other~~ law.

Advisory Note – February 2010

When the Maine Rules of Professional Conduct were adopted, they along with the Maine Bar Rules were written or amended to indicate that ethical violations could be found, and disciplinary action initiated, based on violation of either set of rules. This amendment to Rule 8.4, which was recommended by the Advisory Committee on Professional Responsibility, corrects an oversight in the original rules and clarifies that lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

3. These amendments shall be effective on March 1, 2010.

Dated: February 18, 2010

FOR THE COURT¹

/S/

LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
Associate Justices

¹ This Rules Amendment Order is approved after conference of the Court, all Justices concurring therein.