

The Supreme Court of Ohio

BOARD OF PROFESSIONAL CONDUCT

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OPINION 2016-4

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Imputation of Conflicts Involving Current and Former Legal Interns

SYLLABUS: A law student holding a legal intern certificate, issued by the Supreme Court under Gov.Bar R. II, is engaged in the limited practice of law and bound by the Rules of Professional Conduct. Conflicts of interest arising out of a legal intern's current or former representation of clients are imputed to all lawyers in a private law firm when the intern is employed simultaneously as a law firm clerk. The conflicts of a former legal intern, newly employed as a lawyer, are not imputed to the lawyers in a law firm, but necessitate the screening of the lawyer from any matter he or she had substantial responsibility.

QUESTION PRESENTED: Whether conflicts of interest arising from a legal intern's limited representation of clients in a law school legal clinic are imputed to the lawyers of a law firm where the legal intern is simultaneously employed as a law clerk.

APPLICABLE RULES: Prof.Cond.R. 1.7, 1.9, 1.10; Gov.Bar R. II.

OPINION:

Background

A law school legal clinic has asked the Board to consider whether conflicts arising out of an intern's legal practice are imputed to the lawyers in a law firm when a legal intern is employed there as a law clerk. The legal clinic asks whether imputed conflicts may disqualify both law firms and legal clinics from representing certain clients.

Ohio law school legal clinics, public defender and prosecutor offices, legal aid, and legal services organizations may retain law students, who possess a valid intern

certificate issued by the Supreme Court of Ohio pursuant to Gov.Bar R. II, to perform legal services. ¹ Legal interns are authorized by Gov.Bar R. II to engage in the limited representation of persons who qualify for free legal assistance, and the state of Ohio, or a municipal corporation in the handling and prosecution of civil and certain criminal matters. With client consent, and the approval of a judicial or administrative hearing officer, a legal intern may appear before a court or administrative agency without the presence of a supervising lawyer. A legal intern also is permitted to sign correspondence, pleadings, and legal documents on behalf of a client, with the designation “legal intern.” Gov. Bar R. II, Section 4(D). A law student seeking certification as a legal intern swears or affirms an oath agreeing to be bound by the Rules of Professional Conduct. Gov.Bar R. II, Section 3. A legal intern is supervised by a lawyer who is admitted or temporarily certified to practice law in Ohio. Gov.Bar R. II, Section 7.

Because legal interns are engaged in the limited practice of law, employment as a clerk with a law firm, during or after their representation of clinic clients, may give rise to conflicts of interest that must be analyzed and resolved under the Rules of Professional Conduct.

Analysis

For all practical purposes, a legal intern is a lawyer engaged in the limited practice of law and is governed by the Rules of Professional Conduct. Gov.Bar R. II. A legal intern performs the essential functions of a lawyer, including meeting with clients, analyzing clients’ legal problems, giving advice, and appearing before tribunals with or without the supervision of an admitted lawyer. Because a legal intern is bound by the Rules of Professional Conduct, a legal intern must analyze conflicts of interest that arise between his or her practice in a legal clinic and employment as a law clerk in a private law firm.²

¹ A law student attending an ABA accredited law school outside Ohio may apply for an Ohio legal intern certificate. Gov.Bar R. II, Section 3. If an Ohio-certified legal intern is employed as a law clerk in another jurisdiction or later admitted and working as a lawyer in another jurisdiction, any conflicts arising from his or her limited practice as a legal intern must be analyzed under the professional conduct rules of the jurisdiction in which he or she is working or admitted.

² Bar Assn. of the City of New York, Opinion No. 79-37 (1980) (treating a clinic student certified under the student practice rule as a lawyer for the purpose of a conflict of interest analysis because “[h]e or she will be functioning as a lawyer” and “the clients involved justifiably will regard the student as a lawyer”). See also, Peter Joy and Robert Kruehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, 9 *Clinical Law Review* 493 at 511 (2004) (students permitted to practice law under student practice rules should assume that as clinic students they will be treated as lawyers.)

The legal intern certificate issued under Gov.Bar R. II permits the limited practice of law with only those entities enumerated in the rule. Gov.Bar R. II, Section 1(B)(3). However, a law firm clerk, in possession of a legal intern certificate, is not permitted to practice law, sign pleadings, advise law firm clients, or appear on behalf of a law firm client before a tribunal, and is not considered a nonlawyer for purposes of analysis under Prof.Cond.R. 1.10.³

Law firm employment of legal interns

The employment of a law clerk who is or was engaged in the limited practice of law as a legal intern raises potential conflict of interest issues for the law firm. When the law clerk is simultaneously working as a legal intern in a clinic, the law clerk and the firm must carefully review any conflicts that may exist due to the clerk's current or former representation of clients in the legal clinic. This is similar to a process law firms utilize to analyze conflicts when hiring a lawyer engaged in private practice who has both current and former clients.

Conflicts created by a legal intern's current or former representation of clients in a law clinic are imputed to the lawyers in a firm, even if the legal intern is employed as a law clerk. See Prof.Cond.R. 1.10. See Peter Joy and Robert R. Kruehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, 9 *Clinical Law Review* 493 at 534 (2004) ("law clinic students who have duties on cases comparable to admitted lawyers may be treated as lawyers for imputation purposes and not as nonlawyer assistants."). For example, if a legal intern is representing Client A in a matter through the legal clinic, and the law firm where she works as a law clerk is representing Client B, who is directly adverse to Client A in any matter, the intern's conflict is imputed to all members of the law firm. Prof.Cond.R. 1.7(a). Using the same example, the legal intern's former representation of Client A equally prevents the law firm from representing Client B in the same or substantially related matter, when Client B's interests are materially adverse to former Client A. Prof.Cond.R. 1.9.

Conflicts arising from a legal intern's current or former clinic practice when employed as a law firm clerk may be resolved under procedures set forth for ameliorating conflicts through an appropriate screening method. Prof.Cond.R. 1.10(d). When a legal intern is disqualified personally under Prof.Cond.R. 1.9, the law firm can timely screen the intern from any participation and give written notice as soon as practicable to the

³ The Board acknowledges that Prof.Cond.R. 1.10, cmt. [4] addresses conflicts that arise from the employment in a law firm of nonlawyers, such as paralegals and secretaries, but the Board does not consider a legal intern simultaneously employed as a law clerk as a nonlawyer for the purposes of conflict analysis.

former client. Prof.Cond.R 1.10(e) also removes the disqualification of the firm if a current client of the legal intern waives a conflict under Prof.Cond.R. 1.7. However, conflicts cannot be ameliorated through screening or client consent when the law firm is representing a person in a matter whose interests are materially adverse to the interests of a legal intern's former client, for whom the intern had substantial responsibility in the same matter. Prof.Cond.R. 1.10(c).

Conflicts arising for legal interns employed as a law firm clerk

No conflicts are imputed to other legal interns or supervising lawyers of a legal clinic by virtue of a legal intern's dual employment as a law firm clerk. Nonlawyer employees of a law office, including law clerks, owe duties of confidentiality by reason of their employment, but the duty of confidentiality is not imputed to others so as to prohibit representation of other clients at a current or subsequent employer like a legal clinic. Restatement of the Law (Third), *The Law Governing Lawyers* §123(f) (2016). Prof.Cond.R. 5.3, cmt. 2. To avoid the inadvertent disclosure of confidential client information, a legal clinic should implement screening methods sufficient to prevent a legal intern from participating in a matter being handled by the clinic that he or she also participated as a law firm clerk.

Conflicts after expiration of legal intern certificate

After the legal intern certificate expires pursuant to Gov.Bar. R. II, Sec. 4 and the former legal intern, now a new lawyer, joins a law firm, no conflicts arising from the legal intern's limited practice are imputed to lawyers in the firm. However, the new lawyer must be screened from participation in any matter that he or she had substantial responsibility for a former adverse client in the same matter. Prof.Cond.R. 1.10, cmt. [4].

CONCLUSION: A legal intern certificate allows a law student to engage in the limited practice of law subject to the Rules of Professional Conduct. If a legal intern engages in simultaneous or future employment as a law firm clerk, any conflicts arising from his or her practice as a legal intern are imputed to the lawyers of the firm. Some imputed conflicts arising from a legal intern's practice may be waived with client consent, but matters in which the legal intern had substantial responsibility cannot be waived under Prof.Cond.R. 1.10. Conflicts that may arise from a legal intern's simultaneous employment as a law clerk in a law firm are not imputed to the legal interns or supervising attorneys in a legal clinic. Proper screening methods should be employed to prevent the exchange of confidential information possessed by the law clerk to the staff, legal interns, and supervising lawyers in the legal intern's clinic. Once a legal intern's certificate expires, and the former law student joins a law firm as a new lawyer, no

conflicts from the lawyer's limited practice as an intern are imputed to the lawyers in the firm, but screening of the lawyer is required.

Advisory Opinions of the Board of Professional Conduct are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Rules of Professional Conduct, the Code of Judicial Conduct, and the Lawyer's Oath of Office.