



# Ethical Screens and Lawyers' Conflicts of Interest

**A conflict of interest of one lawyer at a firm or a governmental organization does not necessarily foreclose other lawyers with the same entity from representing the client or taking on the matter.**

BY DEAN R. DIETRICH

## Question

I often hear about law firms “screening” a lawyer to avoid a conflict of interest. What is involved with an “ethical screen”?

## Answer

An ethical screen is used to exclude a lawyer or lawyers from contact with other members of the firm to avoid a claim that the conflict of that lawyer is imputed to all the other lawyers and professionals in the firm. Ethical screens are often used to address conflict situations when a lawyer has interviewed a prospective client and declined legal representation but then another lawyer in the firm is retained to represent the other side of the matter discussed with the prospective client. An ethical screen can also be used in situations in which a lawyer moves into or out of a governmental legal position or moves between two different law firms.

There are other situations when an ethical screen may be used to avoid a conflict of interest, but the prospective-client scenario is the most common circumstance.

The purpose of the ethical screen is to ensure that the screened lawyer does not have any conversation or sharing of information with other professionals in the law firm and thereby to allow the other professionals to represent the opposing party.

The elements of an ethical screen are not specifically identified in the Wisconsin Rules of Professional Conduct. Court decisions from many jurisdictions have identified basic criteria that must be met to have an effective ethical screen. These include the following:

- The screen must be implemented on a timely basis. This means that it must be implemented as soon as the need arises to ensure that information is not exchanged between the screened lawyer and other people in the law firm.

- A clear directive must be given that there should be no communication or discussion between the screened lawyer and other law firm personnel about the individual representation. This includes informing support staff that there should not be communication between support staff for the screened lawyer and other support staff working on the legal matter.

- Care must be taken to prevent the screened lawyer from having access to the paper file or electronic file of the representation being provided to the other party. This requires the law firm to take appropriate steps to block access by the screened lawyer and the staff working with the screened lawyer.

- There should be a clear designation that support staff working on the legal matter will not be providing shared services with the screened lawyer. This often is challenging in a small office, but every effort must be made to ensure there is no communication between the screened lawyer and any other individuals in the law firm.

- Notice must be given to the clients with sufficient information to identify and explain the steps that have been taken by the law firm to ensure no communication occurs and there is no sharing of information.

- Additional steps such as placing client files in locked filing cabinets and creating clear barriers to the sharing of electronic information are important parts of an effective screening process.

## Conclusion

Lawyers must be careful when implementing an ethical screen to ensure that all steps are taken to eliminate any method of communication with the screened lawyer and screened staff. This is the only way to provide assurances to the client that information will not be communicated when it should not. **WL**



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