

# Understanding Recent Screening Rule Changes

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Any lawyer who has moved from one firm to another has faced the challenge of identifying conflicts of interest and, once identified, resolving them. And any firm that's brought on a lateral attorney understands the importance of handling these issues quickly and effectively. Because a lateral's conflict of interest can disqualify the new firm from existing representations and subject it to liability, irresolvable conflicts may preclude individual hiring and even prevent law firm mergers.

For years, many large law firms have urged that they be allowed to resolve such conflicts by creating ethics walls, or "screens," without having to obtain consent from affected clients. Screens, they contended, are a practical and effective way to isolate lateral hires from a situation in which past knowledge might be improperly accessed or communicated. For their part, opponents have argued that screening, absent client consent, puts lawyers' economic interests above the paramount interest of loyalty to clients, and therefore strikes at the heart of the attorney-client relationship.

But screening continues to win support. Early this year, the American Bar Association amended Model Rule 1.10 to endorse screening as a means of resolving conflicts of interest created by lateral hiring. Many states already permit lateral screening in some circumstances, and courts in other jurisdictions have ruled that screening is a permissible means of avoiding disqualification when client information could not have been compromised. Screening is particularly relevant today, as layoffs and firm dissolutions have left more lawyers in the job market, seeking opportunities at new firms.

While screening has become more widely accepted, the standards for what constitutes an acceptable screen continue to evolve. Courts are increasingly demanding about what is required in order for a screen to be considered effective. A body of law, admirably summarized by Professor Susan R. Martyn, has developed to assess particular screening practices. Required measures may include immediate imposition, notification of clients and tribunals, internal notification, documentation of firm policies, and enforcement mechanisms. Especially for large law firms, technology will play an important role in establishing a screen and demonstrating its effectiveness under these criteria. Firms that intend to rely on screening must follow these rules carefully in order to protect themselves and their clients.

## About the Author:

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