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Answer-to-Question-\_1\_

ESSAY QUESTION:

The firm can likely employ the lawyer within the bounds of the Model Rules of Professional Conduct as long as it complies with the requirements of Model Rule 1.10 (a)(2).

#### RULE 1.9 DUTIES TO FORMER CLIENTS

Rule 1.9 (b) prohibits a lawyer from representing a person (or entity) in the "same or a substantially related matter" in which the lawyer's former firm previously represented a client whose interests are materially adverse to the new client's interests and about whom the lawyer acquired information protected by Rules 1.6 and 1.9. The lawyer can only represent the new client under this rule if she obtains informed consent, confirmed in writing from the client represented by the lawyer's former firm. The scenario here almost certainly prohibits the lawyer from representing client B without informed consent: first, the lawyer's new firm is representing client B in the same matter as the lawyer's old firm is represented corporation A.

Second, the interests of corporation A and client B are materially adverse for purposes of Rule 1.9. Restatement Section 132, comment (e) provides that the scope of a client's interests is normally determined by the scope of work that the lawyer undertook in the former representation. It's unclear whether the lawyer's extensive work reviewing Corporation A's records of disposal of chemical bi-products from manufacturing operations relates to its suit against client B. However, the lawyer also participated to a lesser extent in conversations regarding litigation strategy. Even though the lawyer was not involved in the primary litigation strategy sessions, he was likely exposed to information about Corporation A's litigation tactics during the few litigation meetings he attended and through his active role on the team headed to defend Corporation A at his former

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 firm. Since corporation A and client B have filed cross-claims against each other, the lawyer's knowledge of corporation A's litigation strategy pertains directly to corporation A's interests which are materially adverse to the interests of client B. Moreover, the information regarding corporation A's litigation strategy and disposal of chemical bi-products is protected by Rule 1.6 which makes confidential any information related to the representation. Furthermore, under 1.9(c)(1) that information could be used to the disadvantage of Corporation A.

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 Undoubtedly, the lawyer owes a duty to corporation A - a former client - to not represent client B whose interests in the same matter are materially adverse to those of corporation A. However, the lawyer could represent client B in the unlikely event that she obtained informed consent confirmed in writing from Corporation A. To obtain informed consent, the lawyer would have to "make reasonable efforts" to ensure that Corporation A and client B "possess information reasonably adequate to make an informed decision." This could probably require that that the lawyer disclose facts and circumstances concerning the representation of the client B by the lawyer's new firm as well as a description of the material advantages and disadvantages presented by the lawyer's representation of client B. See rule 1.0, comment 6. Good 2 +1

#### RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

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 Under 1.10 (a), lawyers in a law firm are prohibited from knowingly representing a client when any one of them practicing alone would be prohibited from the representation by Rule 1.9 (or 1.7). However, under 1.10 (a)(2), the firm may continue or take on the representation of a client even if a lawyer in the firm is prohibited from representing the client because of a conflict of interest if the prohibition is based on Rule 1.9(a) or 1.9(b) and the firm complies with several requirements.

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 First, the lawyer would have to be timely screened from any participation in the matter and she could not be apportioned any

+1 part of the fees earned in relation to the matter. To effectuate proper screening under Rule 1.0, the lawyer would have to dutifully refrain from communicating with any of the firm's other lawyers regarding the case. Other lawyers in the firm would have to be informed about the screening so that they also refrain from communicating with the disqualified lawyer about the case. In order to protect confidential information related to the case, the firm should also undertake additional measures such as restricting the lawyer's access to files related to the case. See Rule 1.0, comment 8. In addition, to be "timely" the screening would have to begin immediately upon the discovery of the lawyer's disqualification.

Second, the firm B would have to provide written notice to the lawyer's affected former client, Corporation A, including detailed information about the screening procedures employed. The notice must also contain a statement of the firm's and the screened lawyer's compliance with Rule 1.10, a statement that review may be made available before a tribunal, and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedure.

+4 Third, a partner of the firm B and the screened lawyer would have to provide Corporation A with certifications of compliance with Rule 1.10 and the associated screening procedures. These certifications would have to be provided "at reasonable intervals upon the former client's written request and upon termination of the screening procedures."

While the firm B could certainly comply with the provisions of 1.10(a)(2), it would have to evaluate whether continuing to represent client B is a good idea in light of the lawyer's disqualification. In this scenario, it appears that continuing to represent client B represents minimal risks. As long as the screened lawyer and all members of the firm respect the requirements of the screening, firm B's representation of client B would not be tainted in any way and the firm would not be held

responsible for the violation of any rule. Furthermore, termination of an existing relationship with client B would be a significant pecuniary loss to the firm. Furthermore, withdrawal at a relatively late stage in the case would likely have a materially adverse effect on the interests of client B contrary to Rule 1.16(b)(1). Indeed, firm B will be able to provide loyal representation to client B as well as to safeguard the confidentiality of corporation A as the conflict rules are designed to uphold.

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