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Answer-to-Question-_1_

In order to determine Whether Firm B ("FB") may hire Lawyer ("L") without terminating Client Corp ("CB"), we must look to potential rules involved here. We will have to look to Rule 1.9(b) because this is a migrating lawyer problem. We will also look to rule 1.10(a) to see if the potential conflict will impute to FB. And we will also look to 8.4(a), because whenever there is a violation, there is a violation through this rule.

RULE 1.9(b) Analysis

First, we look at 1.9(b) to see if the L himself would be disqualified from representing CB. This is a SHALL NOT rule and we will need to dissect the language. "A Lawyer shall not knowingly represent a person in the same or substantially related matter" if their previous firm formerly represented that person. The rules states that there must be material adversity to that person AND L must have acquired protected information that would be covered under 1.6 and 1.9(c) and the information is material to the matter.

+2 What the heck is "substantially related matter?" The Restatement MR 1.9 comment 3 says that "matters are substantially related ... if they involve the same transaction or legal dispute. It goes on further but this is damaging enough. So, I would say this is substantially related because this is the same lawsuit, just different defendants. This would be tough to argue that the claim is not substantially related... so we will move on in the analysis.

+3 The next part to 1.9(b) is material adversity. We look to Section 132 comment (e) of the Restatement and we see that says that it is "limited to the potential harm to the type of interests that the lawyer sought to advance for the former client." The Restatement mentions that the scope "is normally determined by the scope of work that the lawyer undertook in the

former representation." This brings about two arguments here. The first argument is that their interests are not materially adverse. Firm B ("FB") can say that their positions are not materially adverse because they are both defendants in this suit. That is a poor argument, specially because, in this case, there are cross-claims against each other, which is material adversity.

We continue with 1.9(b) and we look to see if L acquired information that is protected, most likely he did. While the fact pattern does not come out and specifically say it, you can infer from the information given that some information he received was protected under 1.6. L was present for some meetings in which Jill and Client Corp A ("CA") discussed case strategy. L also attended weekly meetings with the Partner to discuss findings and progress of document review. I am not sure an argument could be made that states he did not receive protected information; at least not without violating many rules.

FB can get around these three issues by receiving informed consent, confirmed in writing by CA. This, however, is extremely unlikely! Clearly, at this point in the analysis, L has a conflict of Interest. We must look to Rule 1.10 to see how this imputes to FB and if the lawyer can be screened.

RULE 1.10 Analysis

Rule 1.10(a) states no one in a firm can knowingly represent when anyone of them would be prohibited by Rules 1.7 or 1.9, but there is an UNLESS. The first unless is if the "prohibition is based on personal interest ... and does not present a significant risk of materially limiting the representation...." This not relevant here as the conflict is not due to a personal interest. 1.10(a)(2) is relevant here so we will discuss that. The rule is NO ONE in firm can represent UNLESS the prohibition is based on a 1.9(a) or (b) conflict AND arises out of the disqualified lawyer's association with previous firm; AND the disqualified lawyer is timely screened AND that lawyer receives no part of the

+4
 fee; AND written notice is promptly given to ANY affected former client (here just CA) AND certification of compliance with the Rules and screening procedure are provided to former client by screened lawyer and and a partner of the firm, at reasonable intervals upon the former client's request and upon termination of screening.

+1
 There is a lot here so we will dissect it further. The rule says no one in the firm can represent the client, unless disqualified lawyer is timely screened. We will have to look to Rule 1.0 to see what screened means. "Screened denotes isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law." What does that mean? Well, basically means that if FB wants to hire L, they will need to isolate him from this entire case. They may have to make IT adjustments to make sure he does not get any emails related to this. They may have to change meeting policies, etc. L will not be able to hear anything regarding this issue. FB will be able to timely screen L, so they have met the first part of this. FB will have to provide CA with written notice. This notice MUST include "a description of screening procedure employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client and the screening procedures[.]"
 FB could do this also, if they want to hire L.

The last part is that they must certifications of compliance must be sent by the partner and the screened lawyer to the former client. These must be sent reasonable intervals upon the request of the former client's written request. Also, must be sent upon termination of the screening.

FB can hire L as long as they follow Rule 1.9(b) and: Timely

+1
 Good question

screen, provide written notice, and provide certifications of compliance. Since they have not hired L yet, it would be easy to timely screen him from this case.

If FB does hire L and they do not do these steps, they will be violating Rule 1.9(b). By violating this Rule, they would also be violating Rule 8.4(a) because this Rule states that when you violate any rule, you also Violate Rule 8.4(a). They would also most likely be violating; Rule 1.1 for incompetent representation; potentially Rule 1.6 if L spoke about what their litigation strategy was; obviously, Rules 1.9(b) and 1.10(a); and 1.16(a)(1) because if they failed to screen they violated a Rule and by not withdrawing from representation, they violate this Rule. But, I am sure that FB will not have to worry because they will follow 1.10(a) and then no Rules will be violated.

RULE 1.9(c) Analysis

One last thing, since FB may represent CB, we must also look at Rule 1.9(c) as that establishes guidelines for a lawyer who's firm is representing a former client. That rules says a lawyer SHALL NOT: 1 "use information relating to the representation to the disadvantage of the former client EXCEPT as these Rules would permit or require with respect to a client, or when the information has become generally known; OR Reveal information relating to the representation except as these Rules would permit or require...." Emphasis added. This is just one more step that must be followed by L to ensure that CA's confidentiality is protected. +1

As mentioned above, FB may hire L without terminating its representation of CB as long as they comply with Rule 1.10(a).