Avoid Disqualification by Ethical Screening

Generally, every lawyer in a firm is imputed to have knowledge of the confidential information of every client in the firm. When a lawyer moves from one firm to another, a conflict of interest can be created if a client of the former firm is adverse to a client of the lawyer’s new firm, resulting in the disqualification of the lawyer’s new firm. In many states, disqualification may be avoided under Rule 1.10 or a similar rule that permits a lawyer to be “screened” from the matter in the new firm in which a client of the lawyer’s old firm is an adverse party. The screening protocol must effectively prevent the lawyer who came from the other firm from having access to the file and electronic records related to the case, and from speaking about the case with any of the new firm’s lawyers or employees who are working on that case. It is crucial that the screening protocol be in place before the new lawyer begins working at the firm. If the screening protocol is put in place after the lawyer has been working at the firm for some time, it is likely that the screening device will be deemed ineffective, since the lawyer could have had access to the firm’s records or spoken to the lawyers and other employees working on the case.