

that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of practitioners could be regarded as a firm for purposes of the Rule that the same practitioner should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one practitioner is attributed to another.

With respect to the law department of an organization, there ordinarily would be no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to practitioners in legal aid organizations. Practitioners employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the practitioners should be treated as associated with each other can depend on the particular Rule that is involved, and on the specific facts of the situation.

Where a practitioner has joined a private firm after having represented the Government, the situation would be governed by § 11.111. The individual practitioner involved is bound by these rules generally, including §§ 11.106, 11.107, and 11.109.

Different provisions are thus made for movement of a practitioner from one private firm to another and for movement of a practitioner from the Government to a private firm. The Government is entitled to protection of its client confidences, and therefore to the protections provided in §§ 11.106 and 11.111. However, if the more extensive disqualification in § 11.110 were applied to former Government practitioners, *e.g.*, patent examiners, the potential effect on the Government would be unduly burdensome. The Government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the Government's recruitment of practitioners would be seriously

impaired if § 11.110 were applied to the Government. On balance, therefore, the Government, including the USPTO, is better served in the long run by the protections stated in § 11.111.

*Paragraph (a) of § 11.110* would address principles of imputed disqualification. The rule of imputed disqualification stated in § 11.110(a) gives effect to the principle of loyalty to the client as it applies to practitioners who practice in a law firm. Such situations can be considered from the premise that a firm of practitioners is essentially one practitioner for purposes of the rules governing loyalty to the client, or from the premise that each practitioner is vicariously bound by the obligation of loyalty owed by each practitioner with whom the practitioner is associated. Section 11.110(a) would govern only among the practitioners currently associated in a firm. When a practitioner moves from one firm to another, the situation would be governed by §§ 11.109 and 11.110(b).

*Paragraph (b) of § 11.110* would operate to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a practitioner who formerly was associated with the firm. This section would apply regardless of when the formerly associated practitioner represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate § 11.107. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated practitioner represented the client and any other practitioner currently in the firm has material information protected by §§ 11.106 and 11.109(c).

*Section 11.111* would address practitioners who leave public office, such as resigning or retiring from the USPTO as a patent examiner, and enter other employment, *e.g.*, becoming a patent searcher, or registered practitioner. It applies to judges and their law clerks as well as to practitioners who have acted in other public capacities. It is a counterpart of § 11.110(b), which applies to practitioners moving from one firm to another.

This section would prohibit a practitioner from exploiting his or her former association with a public office for the advantage of a private client. It is a counterpart of § 11.110(b), which applies to practitioners moving from one firm to another.

A practitioner representing a Government agency or section within

the agency, whether employed or specially retained by the Government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in § 11.107 and the protections afforded former clients in § 11.109. In addition, such a practitioner is subject to this § 11.111 and to statutes and Government regulations concerning conflict of interest. In the metropolitan Washington, DC area, where there are so many practitioners for the Federal Government agencies, a number of whom are leaving Government and accepting other employment, particular heed must be paid to the Federal conflict-of-interest statutes. *See, e.g.*, 18 U.S.C. Chapter 11 and regulations and opinions thereunder. In applying § 11.111, the Office would continue to follow the principles announced in *AH JU Steel Co., Ltd. v. Armco, Inc.*, 680 F.2d 751 (CCPA 1982); *Sierra Vista Hospital, Inc., v. United States*, 639 F.2d 749 (Ct.Cl.1981); *Armstrong v. McAlpin*, 625 F.2d 433 (2nd Cir. 1980) (*en banc*) vacated, 449 U.S. 1106 (1981); *General Electric Co. v. United States*, 215 Ct.Cl. 928 (1977); and *Kesselhaut v. United States*, 555 F.2d 791 (Ct.Cl. 1977).

Where the successive employment is a private client and a public agency, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A practitioner should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of public authority. Thus, a registered practitioner should not be in a position as a patent examiner to be influenced by any loyalty to a former client. Also, unfair advantage could accrue to the private client by reason of access to confidential Government information about the client's adversary obtainable only through the practitioner's Government service. However, the rules governing practitioners presently or formerly employed by a Government agency should not be so restrictive as to inhibit transfer of employment to and from the Government. The Government has a legitimate need to attract qualified practitioners as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

When the client is an agency of one Government, that agency should be treated as a private client for purposes of this section if the practitioner thereafter represents an agency of another Government, as when a lawyer