

If You LEAVE ME NOW

ATTORNEY RAFAEL IS A PARTNER AT ABC LAW FIRM and lead counsel in a substantial case in which he represents a corporate client. Several months after accepting the engagement, he realizes that he has a conflict based on a client he represented two years earlier at a different law firm. ABC wants to keep the client and continue the representation by screening Rafael from this matter and assigning it to another ABC attorney.

One possible replacement is Adele, another partner who appeared in the case when it was filed and who has been heavily involved since then. Adele would be ABC's first choice because she is familiar with the case and the client and has litigated against opposing counsel in previous cases. However, the firm is concerned that because Adele has been working closely with Rafael to this point means that she is conflicted out as well.

Another possible replacement is Brian, who has limited involvement in the case. He did some research and wrote an extensive legal memo on the main legal issues in the case. Brian has not had any direct contact with Rafael or the courtroom activity.

Finally, Cassie has not been involved in the case at all to this point but has the experience and expertise to take over the representation and could quickly get up to speed.

Assuming that Rafael is properly screened at the time when the conflict is discovered, who of the following are ethically permitted to take the case over from Rafael?

- A. Cassie
- B. Cassie or Brian
- C. Cassie, Brian, or Adele
- D. None of them



ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethictexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.



ANSWER: When a lawyer develops a conflict in the midst of ongoing litigation, what are the firm's responsibilities regarding screening the conflicted lawyer and assigning their responsibilities to other attorneys in the firm? What level of involvement with the conflicted lawyer will disqualify a non-conflicted lawyer?

As it turns out, Rule 1.06 of the Texas Disciplinary Rules of Professional Conduct provides a fairly simple answer. Rule 1.06(f) provides that "If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct." While many other states do permit law firms to screen individual attorneys who are conflicted out of a representation, Texas does not. Texas' rules are clear—screens are not permitted to eliminate a conflict under these circumstances. Any conflict of one attorney is imputed to all other attorneys in the entire firm. The correct answer is D. For more analysis, go to legalethictexas.com/ethics-question-of-the-month.