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THE CITY OF NEW YORK  
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August 15, 2024

**SUBMITTED ELECTRONICALLY**

Via email to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov)

*Attn: David Nocenti, Esq., Counsel, Office of Court Administration*

**Re: Comment on Proposed Amendments to Rule 1.10 and Rule 3.4 of the  
Rules of Professional Conduct**

To Whom It May Concern:

The City does not object to the proposed amendments to Rule 1.10 of the Rules of Professional Conduct but has a recommendation on the proposed screening change in Rule 1.10 that would focus on client protection. The City supports the proposed amendments to Rule 3.4 of the Rules of Professional Conduct.

Rule 1.10

COSAC proposes to remove imputation for personal conflicts; clarify that conflicts solely based on a client's information in a databases will not be imputed; and allow screening to remove imputation arising from lateral conflicts.

The City offers a specific comment addressed to the proposed screening amendment in Rule 1.10(c)(2)(ii) "...implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm."

While this language mirrors Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees, it does not have the same public policy purpose, which is to encourage public service. The commentary positing the advantages of screening is focused on lateral attorneys practicing in the private sector. Additionally, the commentary does not take into consideration how clients may be affected, but rather only highlights the benefits to the practitioner. Finally, the rule does not specify any “effective screening procedures” that would allow for effective execution of the rule.

Absent a public policy purpose, the City recommends the addition to the rule of the following screening criteria: size, location, timing, practice areas, and organization of the firm. Currently, courts use these factors to assess the adequacy of the firm's screening procedures to ensure fairness. (*See Cheng v GAF Corp.*, 631 F.2d 1052 (2d. Cir. 1980), vacated on other grounds, 450 US 903 (1981); *Hempstead Video, Inc. v. Inc. Vill. of Valley Stream*, 409 F.3d 127 (2d Cir. 2005); *Energy Intelligence Group, Inc. v. Cowen & Co., LLC*, 2016 U.S. Dist. LEXIS 92176 (S.D.N.Y., July 15, 2016).

### Rule 3.4

COSAC proposes an amendment to Rule 3.4, subsection “(f)”, which would prohibit a lawyer from requesting any person (except a client) not to speak with or provide information to another party, unless (i) the unrepresented person is the client's relative, employee, or other agent and (ii) the advice would not harm the person's interests.

The City supports this change and has one recommendation, to add “former employee” to subsection Rule 3.4(f)(1) “...the person is a relative or an employee or other agent of a client; and”. This recommendation makes the rule unambiguous.

### Conclusion

The City does not object to the proposed amendments to Rule 1.10 of the Rules of Professional Conduct. The City’s recommendation of additional language to Rule 1.10 would ensure clarity in screening procedures that are consistent and effective. The City supports the proposed amendments to Rule 3.4 of the Rules of Professional Conduct.

Sincerely,

Muriel Goode-  
Trufant

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Trufant  
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