

When lawyer formerly representing party on one side of lawsuit joins law firm on other side, both lawyer and new firm are disqualified without informed consent of former client of lawyer, and screening lawyer is not adequate remedy.

***Mercer v. Reynolds*, No. 33,380 slip op. (N.M. Sup. Ct. December 6, 2012)**

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In *Mercer v. Reynolds*, the New Mexico Supreme Court dealt with a situation involving the ethical duty owed to a former client. An associate in a firm representing a plaintiff in a case involving an easement dispute was involved in remanding the case to state court and also involved in some investigation efforts, discovery, communication with experts, and attending court hearings on that client's behalf. The plaintiff subsequently changed firms. The associate then was hired at a law firm representing a defendant in the ongoing litigation over the easement. The new plaintiff's firm raised this conflict of issue due to the associate's past work on behalf of the plaintiff as a former client. The defense firm who hired the associate filed a motion seeking judicial approval of the screening process, to screen the associate from the case, based on Rule 16-119(C) NMRA. The district court found that the associate had material information relevant to the litigation and that the defense firm violated Rule 16-119(C) by hiring her, but that the defendant would be harmed if the defense firm was disqualified and found that the screening process would protect the interest of the plaintiff.

The New Mexico Supreme Court addressed the duties owed to clients under Rule 16-119 NMRA and that a firm would be disqualified by hiring a lawyer from a firm previously involved on the other side of the case, unless that lawyer has no protected information or the lawyer did not play a substantial role in the matter. The Court found that the associate in this case clearly played a substantial role in the matter. Therefore, the defense firm that hired the associate was disqualified and this disqualification was mandatory regardless of any screening process the defense firm had in place. The Court found that the Rule was clear that if an attorney played a substantial role in the matter for the former client, the firm must be disqualified. The screening process is only proper if the attorney did not play a substantial role in the matter. The Court further stated that there is no higher duty in the practice of law than loyalty to a client, and that allowing an attorney to change sides in litigation would be contrary to the perception of the public of attorneys providing undivided loyalty to their clients.

Practice Note: This case highlights the importance of the duty of law firms in screening new lawyers for potential conflicts based on representation of opposing parties prior to hiring the lawyer, including problems that could arise in the automatic disqualification of the firm if a conflict is present, and the potential disciplinary action for the firm, if the former client of that new lawyer does not provide informed consent prior to that attorney being hired.