February 14, 2025

By Email
David Nocenti, Esq.
Office of Court Administration
25 Beaver Street, 10th Floor
New York, NY 10004
rulecomments@nycourts.gov

Re: New York City Bar Association Response to Request for Public Comment on a Proposal to Amend Rules 1.8, 1.10, 1.11, 1.12 and 1.18 of the Rules of Professional Conduct regarding Conflicts of Interest

Dear Mr. Nocenti:

We write to provide comments with respect to the Request for Public Comment on a proposal to amend Rules 1.8, 1.10, 1.11, 1.12 and 1.18 of the Rules of Professional Conduct ("RPC") regarding conflicts of interest.

The New York City Bar Association's Professional Discipline Committee discussed the proposed rule changes. Some members oppose eliminating the "appearance of impropriety" standard despite its vagueness that is set out in the RPCs of 1.11 and 1.12. The "appearance of impropriety" standard has been long accepted. The RPC cannot specifically address every situation and some vagueness may be required. Second, some members oppose the temporary postponement of notice clauses in the amendments and believe that the conflicts of interest concern outweighs the confidentiality concern in the specific situations addressed by the specific RPCs of 1.11, 1.12 and 1.18.

Additionally, the Professional Discipline Committee proposes the amended language highlighted below:

RPC 1.11(d)(3):

"~~(2)~~ (3) shall not negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a public officer or employee, except that a lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for private employment as permitted by Rule 1.12(c) and subject to the conditions stated therein.

RPC 1.11(e):

"(e) When a lawyer is disqualified from ~~representation~~ participation under paragraph (d), no lawyer serving in the same government office, agency or department may knowingly undertake or continue representation in the matter unless the office, agency or department acts promptly and reasonably to:"

RPC 1.11(e)(2):

"(2) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the office, agency or department: and"

RPC 1.11(e)(3):

"(3) give written notice to any affected current or former client to enable it to ascertain compliance with the provisions of this Rule, except (i) if the notice to such client is prohibited by law, no notice shall be given or (ii) if the notice would disclose confidential information protected by Rule 1.6, the notice may be temporarily postponed but shall be sent promptly after such confidential information is known to such client or is otherwise no longer protected by Rule 1.6.

Thank you for considering our comments. If you believe that it would be beneficial, we would be happy to discuss these comments with you further.

Sincerely,

Kathryn Donnelly, Chair
Professional Discipline Committee