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**Memorandum**

**To:** Lauren Scott, Managing Partner

**From:** Examinee

**Re:** Ace Chemical: potential conflicts of interest

**1. The potential conflict with Columbia Chamber of Commerce will likely not be an issue**

*a. The conflicts of the Columbia office are imputed to the Franklin office.*

The preliminary question to the overall issue of the Chamber of Commerce conflict is whether the conflicts of one office within a firm can be imputed to other offices in the firm. This is governed by Rule 1.10 of the Franklin Rules of Professional Conduct, and the issue was specifically discussed in a 2015 Franklin Ethics Opinion that specifically asked how the Rules treat a law firm with offices in multiple states. The Ethics Opinion first noted that the term confidence is broadly defined in Rule 1.6 as 'information relating to the representation,' even including publicly available information. The Opinion then indicated that because the Franklin Rules of Professional Conduct presume that confidences are shared by members of a law firm, Rule 1.10 presumptively imputes a conflict of one member of a firm to the entire firm, in every office, regardless of the number of offices.

A reading of Rule 1.10 reaches the same result, indicating that no lawyer shall knowingly represent a client when *any one of them* practicing alone would be prohibited from doing so by Rules 1.7 or 1.9 (current and former client rules), unless certain exceptions apply. Rule 1.10 does not make any reference to attorneys in different offices, nor do any of the exceptions for that matter.

It is clear, therefore, that if our Columbia office would be prohibited from representing Ace Chemical, then so would all of our other offices because of Rule 1.10's imputation of conflict

*b. The Columbia Office would not be prohibited from representing Ace Chemical*

In 2002, the Franklin Supreme Court effectively provided a roadmap in *Hooper Manufacturing, Inc. v. Carlisle Flooring, Inc.*, that is applicable to our issue. In that case, there was a question as to whether representation of a trade association was equivalent to representation of the members of the trade association. Noting that the determination is guided by the facts, the Court began with the question of whether the member provided confidential information to the lawyer necessary to the lawyer's representation of the trade association. If so, then representation of the association is equivalent to representation of the member, and the analysis stops there. Even if the answer is no, the Court found that representation may still be deemed equivalent if the lawyer advised the member that all information provided to the lawyer would be treated as confidential.

Applying those questions to the fact pattern in the case, the Court concluded that representation of the association did not constitute representation of the member. However, the Court then asked one final question: whether, under Rule 1.7, concurrent representation of the association in which Carlisle was a member and representation of Hooper would materially limit the firm's ability to represent either client. The critical factual inquiry, according to the Court, was whether an employee of Carlisle had an important position in the trade association and, in that position, had worked closely with the lawyers for the trade association. Because Carlisle's CEO had worked closely with the firm in her capacity as a member of the trade association's legislative and policy committee, the Court held that there was such a conflict as to materially limit the firm's ability to represent the client and upheld a decision granted a motion to disqualify the firm.

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A motion to disqualify Montagne & Parks LLC from representing Ace Chemical will likely not be successful. The Columbia office represented the Chamber itself, and was clear to the members that their representation was limited to the Chamber. Although confidential information was received from the Chamber, the Columbia office received no confidential information from or about any of the Chamber's members; furthermore, the Columbia office made it clear to the Chamber members that any content communicated would *not* be confidential. Because we received no confidential communications from the members, and had advised the members that all information provided would not be treated as confidential, we will pass that first hurdle.

The next concern is that Jim Pickens, president of Roadsprinters, was chair of the board of the Chamber for one year during our representation of the Chamber. Based on the critical factual inquiry established by the Franklin Supreme Court, if our attorneys worked too closely with Jim Pickens in his capacity as chair of the Chamber's board, then we may still be disqualified under Rule 1.7. However, Jim Pickens was only on the board for one year, and our firm worked primarily with the Chamber's executive director and not with officers of the board. Based on the roadmap provided in *Hooper Manufacturing*, because we did not have close or frequent contact with Jim Pickens, we will probably not be disqualified from representing Ace Chemicals now.

## **2. Samuel Dawes former representation of Roadsprinters will not conflict us out.**

This issue is governed by Rule 1.9 regarding duties to former clients. Under that rule, a lawyer who has formerly represented a client shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client gives written informed consent. The question here is whether Dawes's former representation of Roadsprinters is the same or a substantially related matter to Ace Chemical's interests. The Franklin Ethics Opinion provides some insight to this question as well, specifically asking how does a lawyer determine whether a matter is "substantially related" to another matter.

The Ethics Opinion interprets substantiality broadly, stating that a substantial relationship exists when the lawyer *could* have obtained confidential information in the first representation that would be relevant in the second representation. The purpose of this test is to avoid the appearance of impropriety, so that clients can trust that their communications with their attorneys will remain confidential.

While this question is stated broadly, we have already concluded that no information Dawes learned, *or could have learned*, could possibly be relevant to the litigation against Roadsprinters. In fact, Dawes hasn't even been in contact with Roadsprinters for five years. Particularly when comparing that evidence to the fact that the current case is a breach of contract case, it seems even more unlikely still that Dawes somehow was able to get some sort of information, based on his prior representation of Roadsprinter, that would be relevant to the current representation of Ace Chemical.

## **3. Ashley Kaplan will not conflict us out so long as the proper screening procedures are met.**

Because Kaplan has formerly represented Roadsprinters, Rule 1.9 regarding duties to former clients is implicated again. The Franklin Ethics Opinion also provides some insight to the issue, asking how the Rules deal with lawyers who move from one firm to another.

As noted in the Ethics Opinion, Rule 1.9 itself removes the harshness of the 'substantial relationship' test when a lawyer moves from one firm to another. This is because of 1.9(b), stating that a lawyer shall not knowingly represent a person in the same or substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client: 1) whose interests are materially adverse to that person; and 2) about whom the lawyer

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had acquired confidential information that is material to the matter. Subsection 2 clearly suggests that the lawyer must have *actually* acquired the confidential information; even if they did, the Ethics Opinion points out that Rule 1.10 will still allow the firm to continue representation of the client so long as the moving lawyer is screened from all contact with the matter.

Rule 1.10, which is implicated when an attorney would be prohibited under 1.7 or 1.9, creates an exception that allows representation to continue so long as proper screening procedures are followed. Because Kaplan is almost certainly prohibited from representing Ace Chemicals based on her conflict of interest, she must be screened according to Rule 1.10(2). Under 1.10(2), when the prohibition is based on 1.9 (as is the case here) and arises out of the disqualified lawyer's association with the prior firm (again, Kaplan is disqualified based on her association with the firm in previously representing Roadrunners), there are three screening procedures to follow: i) the disqualified lawyer must be timely screened; ii) written notice must be provided to the affected former client; and iii) certifications of compliance with the Rules & screening procedures must be provided to the former client and screened lawyer by a partner of the firm at reasonable intervals and upon the former client's written request.

Worth noting is that in 1.10(2)(ii), it is not necessary that the former client agree to the screening; it is only necessary that we provide them with the proper notice and other information required under the rule. Provided that we take care to properly screen Ashley Kaplan under the Rules, there should not be any other issues with that potential conflict of interest.

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TO: Lauren Scott  
FROM: Examinee  
RE: Ace Chemical - Potential Conflicts of Interest  
DATE: February 21, 2017

#### MEMORANDUM

This memorandum analyzes whether any potential conflicts of interest exist with respect to Montagne & Parks LLC's potential representation of Ace Chemical Inc. in a breach of contract action against Roadsprinters Inc. Specifically, this memorandum analyzes whether any conflicts of interest are raised by the following three circumstances: (1) Montagne and Parks LLC's Columbia office represents the Columbia Chamber of Commerce, and Jim Pickens, the president of Roadsprinters, was at one time chair of the Chamber's board; (2) Samuel Dawes, who would be the lead litigator on the case, once represented Roadsprinters in a trademark registration; and (3) Montagne and Parks LLC's Olymbia office has interviewed and would like to hire Ashley Kaplan, an attorney who currently works in the Franklin office of the firm that serves as Roadsprinters' outside counsel (Adams Bailey).

Based on my analysis, I have concluded that none of the three scenarios give rise to a conflict of interest.

#### I. Columbia Office's Representation of Columbia Chamber of Commerce

The issue is whether a conflict arises from another office's representation of an entity to which the president of an opposing party was at one time chair. The Columbia office's representation of the Columbia Chamber of Commerce is unlikely to give rise to a conflict of interest because it is unlikely that representation of the Chamber of Commerce amounts to representation of Pickens.

Under Franklin Rule of Professional Conduct 1.7, a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. Although the Rules of Professional Conduct are not binding on courts, the Franklin Supreme Court has indicated it will look to them in the absence of overriding policy considerations. *Hooper*. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client. Here, the issue is whether Montagne and Parks LLC's representation of Ace Chemical will be directly adverse to Roadsprinters by virtue of the president of Roadsprinters having served on the board of the Chamber of Commerce--a client of Montagne and Parks. It is worth noting that "[f]or purposes of determining whether a lawyer previously represented or is representing a client," "lobbying constitutes representation by an attorney." *Hooper*.

The Franklin Supreme Court's decision in *Hooper Manufacturing, Inc. v. Carlisle Flooring, Inc.* outlines the analysis applicable in determining whether a law firm should be disqualified where it works as a lobbyist for a professional trade association to which an opposing party is a member. Specifically, the Court analyzed whether representation of a trade association to which an opposing party belongs is equivalent to the representation of the opposing party itself.

The Court outlined a two-step analysis applicable in such situations. The first inquiry is "whether the trade association member provided confidential information to the lawyer that was necessary for the lawyer's representation of the trade association." *Hooper*. If the answer to that inquiry is yes, "then the representation of the trade association is equivalent to

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representation of the member." *Hooper*. Even if the answer to the first question is "no," "the representation might still be deemed equivalent if the lawyer advised the member of the trade association that any and all information provided to the lawyer would be treated as confidential." *Hooper*. Even if, based on the facts, representation of the Chamber of Commerce is not equivalent to representation of Pickens, we still must consider whether representation of both Ace Chemical and the Chamber of Commerce will materially limit the firm's ability to represent either client.

With respect to the first inquiry--whether Pickens provided confidential information that was necessary for the lawyer's representation--in *Hooper*, the Court explained, looking to Franklin Rule of Professional Conduct 1.6, that "[c]onfidential information is any information related to the representation of the client and learned during the course of the representation." *Hooper*; see also Franklin Rule of Professional Conduct 1.6. "The definition is overly broad and includes all information, even publicly available information, that the lawyer discovers or gleans while representing the client." *Hooper*. "The information must, however, be related to the representation." *Hooper*. According to the Memorandum to File, we received no confidential business information from Chambers members.

Even though we received no confidential business information from Chambers members, we still must consider whether we advised Pickens that information provided to us, as lawyers for the Columbia Chamber of Commerce, would be treated as confidential. The representation might still be deemed equivalent if we advised Pickens that any and all information provided to us would be treated as confidential. According to the Memorandum to File, we advised Chamber members that the content of our communications with them was not confidential. The Chamber and its members acknowledged in writing that our representation was limited to lobbying for the Chamber itself. Our disclosure is akin to that in *Hooper*, where the law firm informed the trade association members that the information provided to them would be kept confidential.

Finally, in analyzing whether representation of both the Chamber of Commerce and Ace Chemical will "materially limit the firm's ability to represent either client," we must also analyze "whether an employee of [Roadsprinters] had an important position in the trade association and, in that position, worked closely with the lawyers for the trade association." *Hooper*. Unlike the facts in *Hooper*, we worked primarily with the Chamber's executive director and not with officers of the board. See *Hooper* ("The affidavits filed by Carlisle state that Carlisle's chief executive officer, Nina Carlisle, serves as one of three members of the trade association's legislative and policy committee. In this capacity, Nina Carlisle works closely with K&W attorneys, developing legislative strategy and directing K&W lawyers on legislative tactics. The affidavit notes that Nina Carlisle meets with these attorneys in person and communicates with them via email every day during the legislative session, an average of every two weeks during the rest of the year. Under Rule 1.7(a)(2), this contact between K&W attorneys and Carlisle's chief executive officer materially limits K&W's ability to represent both *Hooper* and the trade association. The language of Rule 1.7(a)(2) refers to the 'personal interest of the lawyer.' This standard requires us to focus on the nature and extent of the relationship between the attorneys and Carlisle's representatives. The closer and more frequent the contact and the more active the role of the member representative in directing the lawyer, the greater the risk that the lawyer's ability to engage in concurrent representation is 'materially limited.' In this case, Carlisle's CEO plays an active role in directing K&W's attorneys and has frequent contact with them. This creates a substantial risk that the K&W's attorneys' personal interest would materially limit the concurrent representation.")

Like in *Hooper*, based on the fact that Pickens did not provide confidential information to Montagne and Montagne told Pickens that any information provided would not be kept confidential, representation of the Chamber of Commerce is not equivalent to representation of

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Pickens. Thus, Montagne's representation of Pickens is not directly adverse to a former client.

It is worth noting that the fact that a different office is involved in the representation of the Chamber of Commerce is unlikely to be relevant. According to Franklin Ethics Opinion 2015-212, the conflict of one member of the firm is imputed to the entire firm--every office of that firm, regardless of the number of offices the firm maintains." Franklin Ethics Opinion 2015-212; see also Franklin Rule of Professional Conduct 1.10.

## II. Samuel Dawes's Representation of Roadsprinters at Another Firm

The issue is whether the lead litigator on this case--Samuel Dawes's--representation of Roadsprinters in trademark litigation while at another firm raises a conflict of interest. It is unlikely that Mr. Dawes's prior representation of Roadsprinters gives rise to a conflict of interest because the matters are not the same or substantially related.

Under Rule 1.9(a) of the Franklin Rules of Professional Conduct, "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of the former client unless the client gives informed consent, confirmed in writing." Franklin Rule of Professional Conduct 1.9(a). Franklin Ethics Opinion 2015-212 explains that "[a] substantial relationship exists when the lawyer *could* have obtained confidential information in the first representation that would be relevant to the second representation." Franklin Ethics Opinion 2015-212. "It is immaterial whether the lawyer actually obtained such information and used it against the former client, or whether--if the lawyer is a firm rather than an individual practitioner--different people in the firm handled the two matters and scrupulously avoid discussing them." Franklin Ethics Opinion 2015-212. "The reason the disqualification occurs regardless of whether the lawyer actually obtained confidential information is practical: conducting a detailed factual inquiry into whether confidences had actually been revealed would likely compromise the confidences themselves." Franklin Ethics Opinion 2015-212.

Here, we have concluded that no information Mr. Dawes learned, or could have learned, could possibly be relevant to the litigation against Roadsprinters. As such, Mr. Dawes's prior representation is unlikely to give rise to a conflict of interest.

## III. Olympia Office's Dies to Hire Ashley Kaplan

The issue is whether the Olympia Office's desire to hire Ashley Kaplan, who currently works for a law firm that represents Roadsprinters, gives rise to a conflict of interest. Because Ms. Kaplan has not done work for Roadsprinters, it is unlikely that her prior employment gives rise to a conflict of interest.

Under Franklin Rule of Professional Conduct 1.9(b), "[a] lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client (1) whose interest are materially adverse to that person; and (2) about whom the lawyer has acquired information protected by Rule 1.6 . . . that is material to the matter; unless the former client gives informed consent, confirmed in writing." As explained in Franklin Ethics Opinion 2015-212, Rule 1.9 "removes some of the harshness of the 'substantial relationship' test when a lawyer moves from one firm to another." Franklin Ethics Opinion 2015-212. Accordingly, a "new firm may represent a client with materially adverse interests to the client of the moving lawyer's old firm so long as the lawyer did not *actually* acquire confidential information." Franklin Ethics Opinion 2015-212. Here, Ms. Kaplan did not acquire confidential information because she did not do work for Roadsprinters.

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Even if Ms. Dawes somehow acquired confidential information, Rule 1.10 allows the law firm to continue representation of the client so long as the moving lawyer is screened from all contact with the matter." Franklin Ethics Opinion 2015-212. "In order to properly screen, the lawyer must be denied access to all digital and physical files relating to the client and/or the matter. All digital files must be under lock and the screened lawyer must not have the key. In addition, all lawyers in the firm must be admonished that they cannot speak with or communicate in any way with the screened lawyer about the matter. Finally the lawyer cannot receive any compensation resulting from the representation in the matter from which she or he is being screened. Screening must take place as soon as possible, but in no case may it occur after the screened lawyer has had any contact with information about the matter from which he is or she is being screened." Franklin Ethics Opinion 2015-212. "In addition, Rule 1.10 requires that the law firm promptly give written notice to any affected former client to enable the former client to ascertain compliance with the provisions of the Rule. This notice shall include a description of the screening procedures employer; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures." Franklin Ethics Opinion 2015-212.

#### IV. Conclusion

In short, it is unlikely that any of the three scenarios gives rise to a conflict of interest.

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## MEMORANDUM

**TO:** Senior Partner  
**FROM:** Examinee  
**DATE:** February 21, 2017  
**RE:** *Ace Chemical* Conflicts of Interest

### QUESTION PRESENTED

Is there a conflict of interest that will prevent our office from taking Ace Chemicals as a client?

### BRIEF ANSWER

No. We can take Ace Chemicals as a client without there being a conflict of interest.

### ANALYSIS

#### **A. Our Columbia Office's Representation Of The Columbia Chamber Of Commerce Will Not Create A Conflict Of Interest.**

The issue is whether our Columbia office lobbying for the Chamber would violate a concurrent duty owed to Roadsprinters as a member of the Chamber. Under Franklin Rule of Professional Conduct 1.7, a lawyer shall not represent a client if that representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client, or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer. Our offices in Columbia currently represent the Columbia Chamber of Commerce (Chamber), and have represented the Chamber for the past 10 years. During one of those 10 years, Jim Pickens, president of Roadsprinters, was chair of the board of the Chamber.

The issue is whether our Columbia Office's lobbying representation of the Chamber is tantamount to representation of Roadsprinters. To determine whether a representation of an association such as the Chamber is equivalent to representing a member of the Chamber, there is a three prong test. *Hooper Manufacturing, Inc. v. Carlisle Flooring, Inc.* Franklin Supreme Court (2002). For there to be no equivalence, (1) the Chamber member must not have provided confidential information to the lawyer that was necessary for the lawyer's representation of the Chamber; (2) the lawyer for the Chamber must have advised the member that information provided to the lawyers for the Chamber would not be treated as confidential; and (3) representation of both the Chamber and Ace Chemical must not materially limit the firm's ability to represent either client. *Id.*

#### **1. Roadprinters Did Not Provide Confidential Information to Our Columbia Office That Was Necessary For Representation of The Chamber.**

Confidential information is any information related to the representation of the client and learned during the course of the representation. Franklin Rule of Professional Conduct 1.6. This definition includes publicly available information that the lawyer learns while representing the client. *Hooper Manufacturing, Inc.* When a member provides publicly available information to counsel for the trade association, then the counsel is not immediately disqualified from representing a client who is adverse to the member. *Id.* Here, Roadsprinters via Pickens only

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provided publicly available information to our Columbia office counsel. Because Pickens only provided publicly available information to the counsel for the Chamber, this information alone does not disqualify our office from representing Ace Chemical.

## **2. Our Columbia Office Advised Roadsprinters The Information Provided Will Not Be Treated As Confidential.**

When a member of a trade association provides only publicly available information and is told by the trade association's counsel that any information provided will not be kept confidential, then the representation of the trade association is not equivalent to representation of the member. *Id.* Here, our counsel in Columbia clarified in writing to all the Chamber members that the counsel represented the Chamber, and not the members, in lobbying, and that the content of the communications with the members was not confidential. Additionally, both the Chamber and its members acknowledged in writing that our Columbia office's representation was limited to lobbying for the Chamber itself. Because our Columbia office advised Roadsprinters in writing that the content of its communications with our attorneys would not be treated as confidential information, our representation of the Chamber is not equivalent to representation of Roadsprinters.

## **3. The Representation Of The Chamber And Roadsprinters Will Not Materially Limit The Firm's Ability to Represent Either Client.**

In *Hooper Manufacturing, Inc. v. Carlisle Flooring, Inc.*, K&W, a firm that lobbied for a trade association Carlisle Flooring was a member of, sought to represent Hooper Manufacturing in a lawsuit against Carlisle. In that case, Carlisle's CEO worked closely with the K&W attorneys and would email them every day during the legislative session and, on average, once every two weeks for the rest of the year. *Id.* In that case, the court found that this constant contact would materially limit K&W's ability to represent both Hooper and the trade association. The standard provided by the Court requires a case by case analysis on the nature and extent of the relationship between the attorneys and the trade association member. When the contact is closer and more frequent indicating the trade association member has an active role in the directing the attorney, then there is a greater risk the attorney's conduct will be "materially limited" in his or her concurrent representation.

Here, Roadsprinters has been a member of the Chamber for the last 15 years. Pickens has been President for 20 years, and was chair of the board of the Chamber for one year while our Columbia office represented the Chamber. Our Columbia office primarily works with the Chamber's executive director and not with the officers, including Pickens. Because there is limited contact between Pickens and our Columbia office and Pickens does not provide direction to our Columbia office, our representation of Ace Chemical will not materially limit our Columbia Office's ability to represent the Chamber.

Because (1) Roadsprinters did not provide confidential information to our Columbia office; (2) our Columbia office advised Roadsprinters that no information provided would be treated as confidential; and (3) representation of both the Chamber and Roadsprinters will not materially limit our ability to represent either client, there is no concurrent conflict of interest.

## **B. Samuel Dawes' Prior Representation of Roadsprinters Will Not Create A Conflict of Interest.**

The issue is whether Dawes would breach his duty to Roadsprinters as a former client if he represented Ace Chemicals in this litigation. Under Franklin Rule of Professional Conduct Rule 1.9(a), a lawyer is not allowed to represent a person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of the former client

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unless the former client gives informed consent, confirmed in writing.

The issue is whether the issue involving Ace Chemicals is substantially related to Dawes' previous representation of Roadsprinters. When a lawyer could have obtained confidential information in the first representation that would be relevant in the second representation, then there is a substantial relationship. Franklin Ethics Opinion 2015-212. Seven years ago, Dawes represented Roadsprinters in an uncontested trademark registration. The litigation with Ace Chemical involves a breach of shipping contract. Dawes, when interviewed consistent with Franklin Rule of Professional Conduct 1.6(b)(7) has indicated no information he learned or could have learned could possibly be relevant to the litigation against Roadsprinters.

The issue is whether Dawes' continuing professional relationship may preclude him from representing Ace Chemical. When information is provided that has no relevance to the representation for which the lawyer was retained, then these conversations cannot later be used to prevent the lawyer from representing a party who is adverse to them. *Hooper Manufacturing, Inc.* Dawes and Pickens maintained a close professional relationship for several years after Dawes represented Roadsprinters, but because any information provided during this time was not related to Dawes' representation of Roadsprinters, it cannot be used to prevent Dawes from representing Ace Chemicals.

Because Dawes' prior representation with Roadsprinters would not have presented an opportunity for him to learn information that could have been relevant in this litigation, Dawes would not breach his duty to Roadsprinters as a former client by representing Ace Chemical in this litigation.

### **C. Hiring Ashley Kaplan in Our Olympia Office Will Not Create A Conflict of Interest.**

The issue is whether Kaplan's hiring in Olympia would prevent us from taking Ace Chemical as a client. A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client: (1) whose interests are materially adverse to that person; and (2) about whom the lawyer had acquired information protected by Rule 1.6...that is material to the matter." Franklin Rule of Professional Conduct Rule 1.9(b). Here, Kaplan has told our Olympia office that she has previously represented Roadsprinters although it is unclear if she represented Roadsprinters in a substantially related matter while at Adams Bailey. Presuming she did, the issue becomes whether Rule 1.10 applies and Kaplan can be screened from all contact, thus allowing us to take Ace Chemical as a client.

The issue is whether, despite Kaplan's conflict of interest imputed on the entire firm, Ace Chemical may still be represented. When an attorney working for a firm would be prohibited from representing a client as a result of Rule 1.9, the firm may still represent the client if (1) the prohibition based on Rule 1.9(b) arises out of the disqualified lawyer's association with a prior firm; and (2) the disqualified lawyer is timely screened from any participation; (3) written notice is promptly given to any affected former client...; and (4) certifications of compliance with these Rules and with screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

#### **1. Kaplan's Prohibition Is Based On Rule 1.9(b).**

As discussed above, under Rule 1.9(b), Kaplan is prohibited from taking Ace Chemicals as a client.

#### **2. Kaplan Is Timely Screened From Any Participation.**

The issue is whether Kaplan can be timely screened from any participation. Despite Kaplan working in a different state, she will need to be screened. Franklin Ethics Opinion 2015-12. To properly screen, she must be denied access to all digital and physical files relating to the

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client and/or the matter. *Id.* These must be password protected, and she must not have the password. *Id.* Kaplan cannot receive compensation resulting from representation in the matter from which she is being screened. *Id.* This screening must take place as soon as possible, but in no case can it take place after she has had any contact with information about this case. *Id.* Because Kaplan has not yet been hired, if she is screened as soon as she is hired and begins employment in our Olympia office, she will be timely screened from any participation.

### **3. Written Notice Can Be Promptly Given.**

The issue is whether written notice can be promptly given. Our office must give prompt notice to Roadsprinters. This notice must include a description of the screening procedures employed, a statement of the firm's and of the screening lawyer's compliance with these Rules, a statement that review may be available before a tribunal, and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures. This notice can be provided promptly because we have not taken Ace Chemicals as a client yet.

### **4. If Requested, Certifications Of Compliance Can Be Provided.**

The issue is whether certifications of compliance can be provided if Roadsprinters requests it. These certifications can be provided if Roadsprinters requests it.

Because (1) Kaplan's prohibition is based on Rule 1.9(b), Kaplan can be timely screened from any participation in this litigation, (3) written notice can be promptly given, and (4) if requested, certifications of compliance can be provided, Kaplan can be hired as an attorney in the Olympia office without creating a conflict of interest.