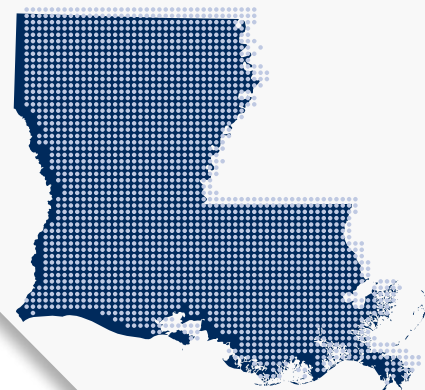


THE FUTURE  
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# How the Boudin Is Made:

## Amending Louisiana's Rules of Professional Conduct



By Casey C. DeReus

## The Idea

A couple of years ago, I was sitting at a table with friends — a plaintiff-side complex litigation attorney, an insurance defense attorney and a non-profit attorney. I was a plaintiff-side personal injury attorney. One friend said, “Wouldn’t it be neat if we could all just work together?” But we knew it would never work — too many conflicts of interest.

Couldn’t we just screen for conflicts and partition the disqualified attorney? No. While that was allowed under the Model Rules of Professional Conduct, Louisiana Rule of Professional Conduct 1.10 (Rule 1.10) did *not* allow for that. In Louisiana, one disqualified attorney prohibited the entire firm from representing a client, including in lateral hire situations.

Over the following weeks, I polled the Louisiana lawyers I knew. Some flat-out denied that Louisiana didn’t follow the Model Rule. Others just laughed at the absurdity of Louisiana’s version of Rule 1.10. I started spreading the word and publishing articles urging amendment of Rule 1.10.

## The Investigation

It was easy enough to complain about Rule 1.10 or even to talk about changing it over drinks. But how do you change the Rules of Professional Conduct? It seemed like an overwhelming task. I started researching. The Louisiana Supreme Court promulgates Louisiana’s Rules of Professional Conduct (the Rules). However, proposals to change the Rules typically start with the Louisiana State Bar Association (LSBA). Since the LSBA has committees that consider new matters, I reviewed the Rules of Professional Conduct Committee (Rules Committee) webpage on the LSBA’s site. Its mission includes recommending changes to the Louisiana Rules of Professional Conduct and acting as a liaison to the Louisiana Supreme Court

on matters concerning the Rules. That sounded like the right committee, but, when I scoured the committee member list, I didn’t know anyone — at least not well. What next?

## The Process

My next step was the LSBA’s Young Lawyers Division (YLD). As luck would have it, I had gone to law school with Collin Melancon, the then-District 1 representative on the LSBA’s YLD Council. I reached out to Collin in April 2021 and he agreed to help. I prepared a formal proposal with a draft revised rule and some background information on why I wanted the rule changed.

The first step was for Collin to submit the proposal to the LSBA YLD Council to discuss at its May 2021 meeting. The Council unanimously supported the amendment and tapped Collin to move the amendment forward.

Collin’s investigation led him to Barry Grodsky, who informed him this amendment should be sent to the Rules Committee and Cheri Grodsky, the LSBA associate executive director. Collin reached out to Cheri in July 2021 who, in turn, sent the proposed amendment to the Rules Committee that same month. In August 2021, the Rules Committee appointed a subcommittee to review the proposed amendment.

In May 2022, the Rules Committee discussed the proposal, reviewed the subcommittee’s report and recommendation, and stated that it expected to complete its review by December 2022. The Rules Committee also proposed that the House of Delegates consider amending Rule 1.10 via resolution at the January 2023 meeting. In January 2023, the House of Delegates approved two amendments to Rule 1.10.

The last step was Louisiana Supreme Court review. Ultimately, the Louisiana Supreme Court amended Rule 1.10 and the new Rule 1.10 took effect in May 2023. The changes are summarized as follows: “The amendments relax the

imputation of conflicts of interest requirements relative to lateral hires; non-lawyers, such as paralegals and legal secretaries; and lawyers whose conflict arose because of events that occurred before the person became a lawyer (*e.g.*, work that the person did as a law student). The amendments recognize the increasingly mobile nature of attorneys in today’s legal climate and eliminate significant impediments on lateral transitions, while remaining sensitive to client concerns regarding loyalty and confidentiality. The amendments further provide needed clarity concerning non-lawyers, such as paralegals and legal secretaries, as well as the effect of events occurring before a person becomes an attorney.”<sup>1</sup>

## Conclusion

This article provides insights on how the Rules of Professional Conduct that govern us evolve. I was overwhelmed when I began trying to amend Rule 1.10 and I wished there had been a step-by-step guide to the process. If you are frustrated by a rule or think it needs to be updated, take heart. The LSBA, the YLD and the Louisiana Supreme Court have systems in place to allow for change, and now you know the process.

## FOOTNOTE

1. <https://lalegaethics.org/louisiana-rules-of-professional-conduct/article-1-client-lawyer-relationship/rule-1-10-imputation-of-conflicts-of-interest-general-rule/>.

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