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The Conflict of Interest Rules: The Comparative Study for Chinese and American Lawyers' Law

Zheng Wang
School of Law, China University of Political Science and Law, Beijing, China
Corresponding author, E-mail: wangzhenglawyer@163.com

Abstract

The conflict of interest rule is one of the essential rules in the professional conduct regulation system of lawyers, which is directly related to the legality of lawyers' practice, the negativity of representation results, and the administrative punishment or discipline of lawyers and law firms. In this paper, through the comparative study of the conflict of interest rules of lawyers in China and the United States, the theoretical sources, specific laws, and general regulations of the conflict of interest rules are analyzed and summarized to provide a comparative reference for the improvement of the conflict of interest rules of lawyers in China. The paper also explores the opportunities and challenges brought by the new technology in the 21st century, represented by computer information technology, to the traditional conflict of interest rules for lawyers and explores the solutions of legal technology to the conflict of interest rules system for lawyers to draw inspiration.

Keywords

lawyer, legal professional ethics, conflict of interest rules, legal technology

Introduction

A lawyer is a practitioner who has obtained a lawyer's practicing certificate in accordance with the law and is entrusted or appointed to provide legal services to clients. Lawyers should protect clients' legitimate rights and interests, safeguard the correct implementation of the law and uphold social equity and justice. A lawyer, as a member of the legal profession, is the client's agent, the legal system's worker, and a citizen with special responsibility for the quality of justice Both the definition of a lawyer in the Chinese Lawyers Law and the definition of a lawyer in the American Bar Association includes the fact that a lawyer's work derives from the client, that the work is to provide legal services, and that the lawyer has special responsibility for social justice and fairness. A law firm is a partnership, a sole proprietorship, or an organization of lawyers employed in a company's legal department or other organization. The word profession is derived from the Latin word 'professionem,' which means to make a public statement. Roscoe Pound, an American jurist, defined the profession as a group of people who "pursue the learned arts as a common profession in the spirit of public service," a definition that is thought to capture the essence of the profession. If the role of the user of the rules created by the leading institutions of society is called a "profession," then the profession's ethics, which is restricted only to such subjects and in such circumstances, would be called the "ethics of the profession." Lawyers are a

profession that maintains social fairness and justice. If lawyers do not understand ethics, they cannot be good lawyers. The British legal scholar Abraham Fraunce wrote Lawyer's Logicke to instruct legal scholars on the importance of studying ethics, which also shows the status of ethics in jurisprudence.The professional ethics of lawyers is often summarized as a "standard conception" of legal ethics. It is based on the principles of partisanship (lawyers take sides), neutrality (lawyers do not judge their clients' actions), and non-liability (lawyers are not held accountable for taking sides).From the perspective of ethical regulation, lawyers' ethics need to move from the level of rights to the level of values. Richard Spinello advocates a value-based ethic as well. Only the mid-level ethical principles that apply to the group (e.g., the golden rule of "do unto others as you would have them do unto you" or Kant's "categorical imperative") are the guiding principles for more realistic and flexible ethical decision-making. The highest good, which points to the prosperity of all human beings, is too lofty to be applied directly to specific decision-making scenarios. At the same time, the underlying moral rights and duties that apply to individuals and govern our distinct moral lives are too behavior-specific and need more guidance for future scenarios. Thus, ethics for lawyers need to be based on the three dimensions of "safeguarding the legitimate rights and interests of clients, safeguarding the proper implementation of the law, and safeguarding social justice and equity." The ethical principles of the median values of the lawyers' profession provide guidance and are guided by specific, realistic, and flexible rules of professional conduct for lawyers.

Conflict of interest rules is one of the critical norms of professional conduct that govern the professional ethics of lawyers. Suppose the requirements of professional ethics need to be regularized. In that case, the assessment of whether their behavior violates professional conditions will be arbitrary and uncertain, and they will need to know precisely where the boundaries of their appropriate behavior lie. Therefore, to ensure that professional conduct is carried out smoothly, professionals must be informed of what they can and cannot do. Without conflict-of-interest rules, for example, clients would be able to monopolize the legal services market by hiring mega or mega-law firms, thereby affecting the proper application of the law and social justice. As Kelsen's theory of legal norms states: rules are norms of conduct (thought to do) that guide people's behavior, are realistic, and are limited in scope by context. Thus, rules differ from principles in that they are natural contingencies, whereas principles are ideal contingencies. A lawyer's conflict of interest rule means that a lawyer must not represent a client if the lawyer's representation of that client would involve a concurrent conflict of interest. Unless: the lawyer believes that they can provide a competent and diligent representation of the client affected, the representation is not prohibited by law; the representation does not involve the same litigation or other proceedings, and the presentation precedes such proceedings. At the same time, the relevant clients have given their informed consent confirmed in writing. The primary sources of law in China involving conflict of interest rules for lawyers include the 2017 Lawyers Law, the 2017 Code of Conduct for Lawyers' Practice, and the Rules on Punishment for Violations by Members of Lawyers' Associations (for trial implementation) of the National Lawyers Association, the 2010 Measures for Punishing Lawyers and Law Firms for Violations and the 2016 Measures for the Administration of Lawyers' Practice of the Ministry of Justice, the Criminal Procedure Law, the Law on Judges, the Law on Prosecutors, the Rules of Criminal Procedure of the People's Protectorate, the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China, and the Procedural Provisions on the Handling of Criminal Cases by Public Security Organs (Order No. 127 of the Ministry of Public Security) of the Ministry of Public Security, as well as other relevant laws, regulations and industry codes. The National Lawyers As-

sociation has yet to formulate independent rules on conflict of interest for lawyers.

The classification system, professional regulation, and legal responsibility of conflict of interest rules differ between China and the United States. With regard to the relationship between theory and practice, Moore points out that the "top-down" and "bottom-up" approaches are instructive to us. First, a theory first, to reach a consensus through adequate analogy, to solve the conceptual confusion first, and then fill the policy vacuum; second, a policy first, to advance steadily, to consider possible solutions to serve the policy vacuum, and to select better policies to implement, and then to solve the conceptual confusion.Therefore, this article will focus on comparing and analyzing the conflict of interest rules system, specific rules, and legal responsibilities of lawyers in China and the United States to learn from and improve China's attorney conflict of interest rules and provide a comparative reference for the development of uniform attorney conflict of interest rules.

At the same time, human society in the 21st century is undergoing a new global technological revolution marked by computer information technology and other high technologies. This new technological revolution has had and continues to profoundly impact the legal profession's way of working and ethical values. Therefore, when formulating and improving the rules on conflict of interest for lawyers, we should be forward-looking and anticipate the impact and problems of computer information technology and other legal technologies on the traditional legal ethics and rules to avoid the imbalance of lawyers' practice due to the lack of regulations or the blurring of controls and systems. In the future, with the deepening application of network, digital and intelligent technologies in the judicial field, we can embed technical regulations in the area of conflict of interest rules for lawyers' professional ethics to effectively promote the legal compliance of lawyers' practice, safeguard the legitimate rights and interests of clients and social justice, and effectively prevent lawyers from being disciplined and administratively punished. At the same time, the information society should still uphold what Max Weber calls human value rationality to resist the impact of technology-led instrumental rationality and avoid slipping into the values of information worship and dadaism as the goal of survival.

I.Rules Relating to Conflicts of Interest for Lawyers in the United States

The ABA Model Rules of Professional Conduct are essential for lawyers' study of the law of professional conduct.For more than 100 years, the ABA has played a leading role in legal professional ethics and professional responsibility by developing professional standards that serve as a model for the law governing the legal profession.The Model Rules provide a responsible approach to the ethical practice of law. They are consistent with other laws such as constitutional law, corporate law, tort law, fiduciary law, and agency law. The Model Rules provide a responsible approach to the ethical practice of law. They are consistent with professional obligations under other laws such as constitutional law, corporate law, tort law, trust law, and agency law.As noted, the American Bar Association has been developing and revising professional ethics and model rules for lawyers since 1908. The Model Rules of Professional Conduct and their interpretations were amended 14 times by the ABA National Conference between 1983 and 2002. They were completed at the ABA National Conference's midyear meeting in Philadelphia on 5 February 2002.The ABA Model Rules of Professional Conduct, as the current standard of professional conduct for lawyers in the United States, provide

a comprehensive and consistent guide to addressing the increasingly complex ethical issues in law practice. The conflict of interest rules for lawyers outlined in the "Client-Lawyer Relationship" section of the Model Rules of Professional Conduct (i.e., Rules 1.7 through 1.12), including Rule 1.7 Conflicts of Interest: Current Clients, Rule 1.8 Conflicts of Interest: Current Clients: Specific Rules, Rule 1.9 Duties to Former Clients, and Rule 1.10 Duties to Former Clients. Rule 1.10 Imputation of Conflict of Interest: General Rules, Rule 1.11 Special Conflicts of Interest of Prior and Current Government Officers and Employees, Rule 1.12 Former Judge, Arbitrator, Mediator or Other Neutral Third Party.

1. Conflict of interest classification and structure system

The American Bar Association Model Rules of Professional Conduct conflict of interest rules are primarily based on the client's perspective. They include specific conflict of interest rules and interpretations, including current client, former client, general rules of presumption, notable conflicts of interest, and neutral third-party conflict of interest rules. The client perspective conflict of interest classification system reflects the essential source of conflict of interest, i.e., a lawyer may not represent a client if the lawyer's representation of that client involves a concurrent conflict of interest. The layout of the Model Rules Conflicts of Interest under the Model Rules uses a structural system of boldface rules and corresponding notes, with the boldface rules being the body of the conflict of interest rules and the messages being specific explanations and descriptions (including examples) of the boldface rules. Such a restated layout results from painstakingly detailed analysis and combination based on the widest possible dissemination, comments, and suggestions on the discussion draft of the Model Rules.

2. Specific Rules and Interpretations of the ABA Model Rules on Conflicts of Interest

The ABA Conflict of Interest Rules consist of five subsections, and the interpretations are divided into 94 situations. For easy reading and understanding, this section follows the format of the Model Rules, i.e., "text plus commentary," and begins with Model Rule 1.7 and continues through Rule 1.12.

2.1 Rule 1.7 Conflicts of Interest: Active Principals

This article focuses on concurrent conflicts of interest for existing principals and four exceptions, with 35 specific circumstances listed in the interpretation. These include: (a) the Model Rules treat the following as concurrent conflicts of interest, with (b) exceptions. (b) Exceptions include: where the lawyer believes that they can provide a diligent representation of the affected client; where the term is not prohibited by law; where the representation is not of the same proceeding but is a suit against another client; and where the lawyer should obtain the consent of each client. The exceptions include: where the lawyer believes that they can provide diligent representation to the affected client; where the representation is not prohibited by law; where the representation is not in the same proceeding but is against another client; and where the lawyer obtains the written informed consent of each client involved.

The 35 interpretive circumstances include the general principles of loyalty and independent judgment, the doctrine of direct adverse identification, the determination of potentially material risk, liability to former clients and other third parties, personal conflicts of interest of the attorney, conflicts of interest of persons paying attorneys' fees for the attorney's services, conflicts of representation prohibited by law, the meaning of intelligent consent, written acknowledgment, withdrawal of consent by the client, consent to future conflicts, litigation and non-litigation conflicts of interest, and joint representation. Conflicts of interest in collective representation and organizational client conflicts of interest.

2.2 Rule 1.8 Conflicts of Interest: Active Principals: Specific Rules

This rule focuses on the specific rules for existing clients and lists 23 situations in the interpretation. These include: a) A lawyer may not transact business with a client or knowingly acquire ownership, possession, security, or other property interests against a client. b) A lawyer may only use information about a client to the client's detriment if the client gives wise consent. c) A lawyer may not induce a client to make any material gift, including a legacy. d) A lawyer may only agree or negotiate to obtain a right to write or media communication of the substance of information relating to the representation once the representation is concluded. e) The attorney shall not provide financial assistance with pending or preparation of litigation. f) A lawyer may not accept remuneration from anyone other than the client unless the client agrees, the client's information is protected, and the lawyer's independence is not interfered with. g) A lawyer may only represent up to two clients with the consent of all clients to develop a package solution. h) A lawyer may disagree with a client in advance to limit the lawyer's liability for misconduct in law practice. i) A lawyer may disagree with a client limiting the lawyer's liability for the lawyer's misconduct or enter into a settlement agreement with an unrepresented former client for damages arising out of such liability unless the person is advised in writing of the desirability of obtaining independent legal counsel and a reasonable opportunity to seek such advice. j) A lawyer may not acquire a property interest in a lawsuit's cause or subject matter. k) No sexual relationship with a client unless there is a prior consensual sexual relationship. l) All of the above prohibitions apply to lawyers in the same firm. The 23 interpretations of this Article include the rules governing business transactions between clients and lawyers, use of information relating to the representation, gifts to lawyers, copyrights, financial assistance, third-party payment for attorney services, package settlements, limitations on and settlements of malpractice liability, acquisition of property interests by lawyers in litigation, the prohibition is personal and does not apply to co-counsel, and the doctrine of presumption of innocence. And the principle of the idea of prohibition.

2.3 Rule 1.9 Duties to former principals

This rule focuses on the duties of former clients and lists nine situations in the Explanatory Notes. These include: a) A lawyer who has represented a person in a matter in which there is a severe conflict between the interests of that person and the former client in the same matter or a substantially related matter, and the lawyer is not permitted to represent that person in that matter after that unless the former client has given their informed consent in writing. b) A lawyer may only represent a person if the former client has informed consent in writing: the former client has a severe conflict with that person's interests, and the lawyer has knowledge of relevant material information. c) A lawyer who has represented, or the lawyer is or was representing, a per-

son in a matter in which the former client has a severe conflict of interest. A lawyer shall not: use information about a representation to the detriment of a client unless the use of the information is permitted or required by these rules or the information is publicly known or disclosed information about representation unless allowed or required by these rules.

The nine interpretive circumstances include a lawyer's continuing duty of confidentiality and compliance with this conflict of interest rule after the termination of the engagement; the determination of material risk as to whether prior access to a former client's factual confidential information has a "substantial connection" to the subsequent matter; and the movement of lawyers between law firms, where only the lawyer's possession of the relevant information precludes them from changing firms. The lawyer who moves between law firms is only prevented from representing a particular client if the lawyer has the relevant information or may represent a specific client if the lawyer does not have the relevant information; the lawyer's duty of confidentiality remains after changing firms, etc.

2.4 Rule 1.10 Presumption of conflict of interest: general rules

This rule focuses on the presumption of a conflict of interest: the general rule, and lists 12 situations in the Commentary. These include: a) Where a lawyer is subject to Rule 1.7 or 1.9, a fellow lawyer must not knowingly represent a lawyer. Unless: a) the prohibition is in the personal interest of an unrepresented lawyer; the ban is on a former client and at the former firm: b) the lawyer does not participate and does not share in the lawyer's fees; c) all former clients affected are given timely written notice and informed of the shield procedure, etc.; d) within a reasonable time after receipt of the former client's written request and termination of the shield procedure, the lawyer and a partner of the firm shall provide proof of compliance with the Rule and the shield procedure to the former client. e) A lawyer's departure does not prohibit the firm from representing a client with a conflict of interest. Unless: the matter is one or substantially related, and any lawyer in the firm is restricted by access to material information. f) The affected client may waive the ineligibility of a lawyer under this rule under the conditions outlined in Rule 1.7 (Current Clients). g) The ineligibility of a lawyer who has worked with a former or current government lawyer in the firm is governed by Rule 1.11. The 12 interpretative scenarios include the definition of "law firm" and the 11 principles of constructive ineligibility.

2.5 Rule 1.11 Special Conflicts of Interest of Former and Existing Government Employees and Staff

This Rule focuses on the particular conflicts of interest of former and current government employees and employees and lists ten situations in the Commentary. These include: a) Except as permitted by law, a government attorney: is bound by Rule 1.9(c) not to compromise and disclose information about a former client; and shall not represent a matter in which they were personally or substantially involved unless the appropriate governmental authority has given its informed consent in writing to the representation. b) The above attorney is ineligible to represent, and a fellow attorney shall not knowingly represent. Unless: the ineligible attorney is promptly screened and does not share in any attorney's fees obtained in the matter, the appropriate government is promptly notified in writing. c) An attorney may not represent a client if "secret government information" obtained while the attorney is a government employee creates a conflict of interest for the client. The

firm may represent a lawyer only if the lawyer is shielded and does not share in the lawyer's fees. d) Except as permitted by law, a lawyer who is serving in a public capacity: is subject to the conflict of interest rules; may not: a) Participate in a matter in which they are personally or substantially involved while a private attorney unless the appropriate government has given its informed consent in writing; b) Participate personally in negotiations unless the lawyer is a judge's clerk and has notified the judge. c) For purposes of this rule, "matter" includes any judicial or other proceedings, applications, requests for rulings or other determinations, contracting, claims, arguments, investigations, charges, accusations, arrests, and other specified matters involving specific parties; and any other matter subject to the conflict of interest of the appropriate governmental body.

The ten interpretive circumstances include that lawyers who were or are in public office are subject to the Rules of Professional Conduct, including the prohibition on concurrent conflicts of interest; that lawyers are prevented from using their public office for the benefit of other clients; that only lawyers who were or are in public office are ineligible for representation in cases in which they are personally or substantially involved; that when a lawyer moves from the first government to the second government, the former government should be treated as a former client; that the shield does not prohibit partners from dividends but prohibits remuneration from direct matters in which there is a conflict of interest; lawyers are not prohibited from concurrently representing private clients and governmental agencies if they do not violate the conflict of interest rule and are not prohibited by law, etc.

2.6 Rule 1.12 Former Judges, Arbitrators, Mediators, or Other Neutral Third Parties

This Rule focuses on the conflict of interest rules for former judges, arbitrators, mediators, or other neutral third parties and sets out five situations in the Commentary. These include: a) Except in (d), a lawyer who is personally and substantially involved in a matter as a former judge, arbitrator, mediator, or other neutral third parties may not represent any person in connection with that matter unless all parties have given their informed consent in writing. b) A lawyer who is personally and substantially involved in a matter as a judge, arbitrator, mediator, or another neutral third party may not negotiate with a party to the matter or the party's attorney regarding employment. (b) A lawyer who is personally and substantially involved in a matter as a judge, arbitrator, mediator, or another neutral third party shall not negotiate with the parties to the matter or with the parties' attorneys concerning their employment. A lawyer assistant to a judge may negotiate on the employment issue after notifying the judge or other adjudicator. c) If a lawyer is ineligible to represent under (a), no lawyer in the lawyer's firm shall knowingly represent or continue to represent the lawyer either (c) If a lawyer is ineligible for representation under (a), no lawyer in the firm of that lawyer shall knowingly represent or continue to represent the lawyer unless: (1) the ineligible lawyer is promptly shielded from participation in the matter and is not entitled to attorney's fees for the matter, and (2) the parties and the tribunal are promptly notified in writing to enable them to ascertain the lawyer's compliance with this rule. d) An arbitrator whom a party has selected as one or more arbitrators shall not be prohibited from representing that party.

The five interpretative circumstances include the meaning of "personally and substantially"; a lawyer who has acted as an arbitrator, mediator, or other neutral third party and is personally and substantially involved in a matter is prohibited from representing that matter unless all parties give their informed consent in writing; a neutral third party may also have personal or constructive disqualification; and a neutral third party is usually

under a duty of confidentiality to the parties. The shield procedure does not prohibit the shielded lawyer from receiving fees and partnership dividends under the original agreement but not from receiving compensation directly related to the ineligible representation.

II. Relevant Rules on Conflict of Interest of Lawyers in China

The primary legal sources of conflict of interest rules for lawyers in China include the 2017 Law on Lawyers, the 2017 Code of Conduct for Lawyers' Practice, and the Rules on Punishment for Violations by Members of Lawyers' Associations (for Trial Implementation) of the National Lawyers Association, the 2010 Measures for Punishing Lawyers and Law Firms for Violations and the 2016 Measures for the Administration of Lawyers' Practice of the Ministry of Justice, the Criminal Procedure Law, the Law on Judges and the Law on Prosecutors of the National People's Congress, the Rules of Criminal Procedure of the People's Protectorate of the Supreme People's Protectorate and the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China, the Ministry of Public Security's Provisions on Procedures for Handling Criminal Cases by Public Security Organs (Ministry of Public Security Order No. 127) and other relevant provisions. To facilitate the comparative study of the conflict of interest rules for lawyers in China and the United States, this article compares and analyzes the types of conflict of interest and specific rules for lawyers concerning the Lawyer's Law, the departmental regulations of the Ministry of Justice and the normative documents (rules) of the Lawyers Association.

1. Relevant legal provisions and characteristics of conflict of interest rules for lawyers in China

Article 23 of China's Lawyers Law stipulates that law firms shall establish a sound practice management and conflict of interest review. Article 39 specifies that a lawyer shall not represent both parties in the same case and represent legal matters in which they or their close relatives have a conflict of interest. Article 41 stipulates that judges and prosecutors shall not act as litigation agents or advocates for two years after leaving office. Article 47(3) and Article 50(5) stipulate that lawyers and law firms shall be liable for "warning, fine, confiscation of illegal income and suspension of practice for not more than three months," and regulation firms shall be responsible for "warning, fine, suspension of practice for not less than one month and not more than six months, or The administrative penalty shall be "warning, fine, suspension of business for not less than one month and not more than six months until the revocation of the practicing certificate of the law firm." Article 28 of the Measures for the Administration of Lawyer Practice of the Ministry of Justice adds to the Law on Lawyers the conflict of interest situation of "not being dealt with in the same case but having committed a crime that is related" and "a lawyer shall not act as an agent of another lawyer of their law firm as an arbitrator or in a case that they have handled. The administrative penalties are the same as those in the Law on Lawyers. The administrative penalties are the same as those under the Law on Lawyers. Article 7 of the Measures for Punishing Lawyers and Law Firms for Illegal Acts adds three types of conflict of interest situations in which lawyers act as "administrative litigation or non-litigation agents and legal advisors." Article 27 adds four types of conflict of interest situations in which law firms "assign, fail to conduct conflict of interest reviews as required, knowingly assign and condone." Article 27 adds four types of conflict of interest

situations for law firms: "assigning, failing to conduct the required conflict of interest review, knowingly assigning and condoning."

In addition to the laws mentioned above and departmental regulations, the essential rules of practice for lawyers in China regarding conflict of interest rules are the 2017 Code of Conduct for Lawyers of the National Lawyers Association. And the 2017 Rules for Disciplinary Action against Violations by Members of the Lawyers Association (for Trial Implementation). Article 12 of the Code of Conduct prohibits lawyers from simultaneously representing and acting in legal matters in which they or their close family members have a conflict of interest. Article 13 prohibits lawyers from engaging in litigation representation or defense practice while serving on standing committees at all levels; Section 3 prohibits unlawful exploitation of clients' rights and interests, and Section 4 on conflict of interest review. Article 13 prohibits lawyers from engaging in litigation representation or defense practice while serving on the Standing Committee of the People's Council at all levels; Section 3 prohibits unlawful exploitation of the client's rights and interests and Section 4 on conflict of interest review. The review of conflict of interest in Section 4 includes the establishment of a conflict of interest review system in Article 48, the recusal of a lawyer who has a conflict of interest in Article 49, the eight circumstances in which a lawyer may not establish or maintain a client relationship in Article 50, and the five circumstances in which a client may agree to be represented or continue to be described in Article 51 (if the client decides to establish or maintain a client relationship, they shall sign an informed consent form). If the client has signed an informed consent form to waive the requirement, the lawyer shall keep the case information confidential. Rule 16(4) of the Disciplinary Rules (Trial) orders a member to withdraw from representation or resign from an engagement due to a conflict of interest. Chapter IV Violations and Application of Sanctions Section I Conflicts of Interest Article 20 provides for eleven conflicts of interest, and Article 21 provides for six situations where failure to obtain the consent of the parties' clients constitutes a conflict of interest.

In addition, local lawyers' associations have also formulated conflict of interest rules applicable to their respective provinces and municipalities, such as the 2001 Rules for Avoiding Conflict of Interest in the Lawyer Profession in Beijing (for Trial Implementation), the 2013 Rules for Avoiding Conflict of Interest in Lawyer Practice in Fujian Province (for Trial Implementation), the 2019 Rules for Identifying and Handling Conflict of Interest in Lawyer Practice in Shanghai, the 2019 Rules for Preventing Conflict of Interest for Lawyers in Guangdong Province, and the 2020 Rules for Identifying and Handling Conflict of Interest in Hangzhou Lawyers' Association (for Trial Implementation), among others.

Through the above legal regulations on conflict of interest of lawyers, China's rules on conflict of interest of lawyers present the following characteristics: firstly, the rule-making bodies include the legislative organs of the National People's Congress, judicial and administrative organs and lawyers' trade associations; secondly, the types of regulations include laws and interpretations, departmental regulations and industry regulatory documents; thirdly, the types of legal liabilities include civil liabilities, administrative liabilities, and industry sanctions. In addition, the conflict of interest rules for lawyers in China also presents a situation of crossover of responsibilities between laws, departmental regulations, and industry norms, inconsistent names of rules, enumerated formulations affecting the overall formulation of conflict of interest rules, and confusion between conflict of interest rules and rules on illegal profits and confidentiality (including shielding procedures). As it

is not possible to exhaust the list of conflict of interest rules at all levels of the legal code, an "other" clause has been added at all levels of the legal code, and the criteria for the application of the "other" clause are uniformly based on "practice experience and common sense." The standard of application of the "other" clause is uniformly based on "practice experience and common sense." Such a "standard" undoubtedly increases the risk of lawyers' practice and the arbitrariness of the implementation of the rules, which defeats the fundamental purpose of the "rules," which is to clarify the boundaries and inform clearly what can be done and what cannot be done. The essence is that we need to learn more about the origin of conflict of interest rules for lawyers, the system needs to be clearer, and the legislative techniques need to be strengthened.

2.Conflict of interest rules for lawyers in China needs to be improved

On 21 October 2021, the Beijing Third Intermediate Court issued a judicial recommendation to all China Lawyers Associations, proposing to amend three articles in the Code of Conduct for Lawyers' Practice to clarify that if different lawyers of the same law firm accept instructions from two or more parties that are not opposed to each other but have a conflict of interest, the lawyer should inform the client and take the initiative to recuse himself or herself, unless the client agrees to his or her representation or continuation. The Third Intermediate Court held that the Law on Lawyers' Practice should be amended to provide for the exemption of conflict of interest and the establishment of a firewall. The Third Central Court held that the Code of Practice for Lawyers should be updated and improved promptly, taking into account the current social and economic situation of China, the judicial needs of the people, and the development of the legal profession, in order to review the conflict of interest mechanism for law firms.

Therefore, the Third Central Court proposed three amendments to the Code of Conduct for Lawyers: First, to amend Article 51(5) to read: "In civil litigation, administrative litigation or arbitration cases, different lawyers of the same law firm shall act as agents of both parties to the dispute, or the firm or its staff shall act as agents of one party and other lawyers of the firm shall act as agents of the other party. (2) To add Article 52(1). (2) To add Article 52(1)(7): "In civil litigation, administrative litigation or arbitration cases, where different lawyers of the same law firm are simultaneously entrusted by two or more parties who are not opposed to each other but have a conflict of interest." Third, amend Article 53 to read: "If the client is informed and signs an informed consent form to indicate exemption, a firewall mechanism shall be established between the lawyers concerned, and the law firm shall notify the lawyers concerned in writing to segregate their offices and adopt confidentiality measures, and shall not exchange or disclose information related to the case handled, and shall specify the subject of supervision to monitor the implementation of the firewall throughout the process.

There is another example of the People's Court (People's Protectorate) issuing judicial recommendations to the National Lawyers Association to amend the conflict of interest rules for lawyers. The People's Court has also drawn up three amendments on its behalf and made them public through the media. The people's trust in lawyers, the loyalty of lawyers to their clients, and the care of the party and the judiciary for the lawyers are all in urgent need of independent national unified Conflict of Interest Rules for Lawyers. Local lawyers' associations can also formulate local rules on the unified national conflict of interest rules to avoid a wide variety of rules.

III. Comparison and Reference of Conflict of Interest Rules for Lawyers in China and the United States

1. Comparison of Conflict of Interest Rules between the United States and China

1.1 Comparison of the Conflict of Interest Rules between China and the United States

Through the aforementioned comparison of the conflict of interest rules for lawyers in the United States and China, we can see that the conflict of interest rules are both part of the Code of Professional Conduct for Lawyers, and they are both provided for in the form of a particular chapter. The American Bar Association's Model Rules of Professional Conduct contain five subsections on conflict of interest rules from Rule 1.7 to Rule 1.2, and the National Lawyers Guild's 2017 Code of Conduct for Lawyers contains five articles on conflict of interest review in Section IV from Article 48 to Article 52. Although there are five articles, there are significant differences between the two sides regarding scientific classification and rule-making techniques. For example, Article 48 of Section IV Conflict of Interest Review of the Code of Conduct states that law firms shall establish a conflict of the interest review system, which has been explicitly stated in Article 23 of the Lawyers Law that law firms shall establish a conflict of the interest review system, so there is no need to repeatedly state and waste a legal article in the Code of Conduct.

Article 12 of the Code of Conduct, which states that "A lawyer shall not simultaneously represent or represent a person who has a conflict of interest with him or her or a close family member," is a fundamental conflict of interest rule but is listed outside of section IV on conflict of interest, which is somewhat abrupt. Article 13, "Lawyers shall not engage in litigation representation or defense practice while serving on the Standing Committee of the People's Council at all levels," is clearly a conflict of interest rule but is listed outside of section 4. Section 3, which prohibits the unlawful exploitation of a client's rights and interests, also deals with the conflict of interest rules for lawyers. The eight types of conflict of interest representation in Article 50 and the five types of conflict of interest situations that may be represented with consent in Article 51 of the Code of Practice in China are not exhaustive by way of enumeration, and a rule that is not exhaustive will often be "overwhelming" when applied in practice. The US model rules are therefore worthy of our consideration, as the main text of the conflict of interest rules can be clarified in the Code of Conduct, and separate national Conflict of Interest Rules can be formulated to explain and clarify the specific rules applicable to each type of conflict of interest situation.

In addition, the Code of Conduct in China does not contain clear rules or vague rules on immunity, confidentiality, shielding procedures (firewall system), and the principle of deeming, which leaves the court with no basis for investigation in the trial process. In this regard, the Beijing Third Intermediate Court has made public judicial recommendations to the National Lawyers Association and helped to formulate specific amendments to the Code, which is indeed a spur to lawyers' profession.

1.2 Are conflict-of-interest rules for lawyers a professional regulation or an administrative penalty?

Lawyers' violation of conflict of interest rules may constitute an administrative penalty under the Lawyers Law of China or a professional penalty under the Code of Conduct and the Disciplinary Rules (for trial implementation), and the types of violations are similar. As a result, there is often controversy as to whether the same conflict of interest should be subject to professional or administrative sanctions, which eventually evolves into an artificial punishment or sanction by the judicial administrative authorities or lawyers' associations based on the "seriousness of the circumstances." In addition, there is, of course, an implicit "aggravation" of the complaint, i.e., whether the complainant (who is the opponent of the conflict of interest) is aggressive in his or her attitude and approach to the complaint before the bar association or the judiciary. Obviously, such a disciplinary or administrative sanction is unconvincing. It is necessary to sort out and classify the rules and clarify which violations are disciplinary and which constitute administrative sanctions.

Obviously, a more profound discussion is the necessity for lawyers to be liable for administrative sanctions for violating the conflict of interest rules. There is no doubt that conflict of interest rules belong to the rules governing the practice of law and that violations of these rules should be punished through professional regulation. At the same time, the industry rules are a higher standard of professional conduct than the general administrative violations; if the professional code of conduct to administrative violations will undoubtedly expand the form of responsibility and restrict the development of the industry or reverse the development and implementation of the higher industry rules, and thus undermine the standard development of the industry. Therefore, the author believes that the conflict of interest rules for lawyers should be clearly defined as an industry rule and a higher standard rule system should be established, and violations of the rules should be subject to the legal responsibility of industry sanctions. As for severe violations of conflict of interest rules that constitute administrative penalties or even criminal offenses, the Law on Lawyers and the Ministry of Justice's Measures for Punishing Lawyers and Law Firms for Violations of the Law can be clearly defined in the Law on Lawyers and the Legal Liability Chapter to establish a conflict of interest system for law firms, and should not be vaguely presumed to be liable for administrative penalties as long as they constitute a conflict of interest. This is one of the primary reasons for the difficulties in applying the conflict of interest rules and the application of sanctions and penalties.

1.3 The Super-Size Law Firm Challenge Common to the US and China Conflict of Interest Rules

The US Model Rule 1.10 Conflict of Interest Deeming: In the paraphrase of the general rule, "law firm" is defined as "a law firm is a lawyer practicing in a partnership, professional corporation, sole proprietorship or another form of the organization entitled to practice law, or a lawyer employed by a legal services organization, corporation or other organization. A law firm is a lawyer practicing in a partnership, professional corporation, sole proprietorship, or other forms of the organization entitled to practice law or a lawyer employed by the legal department of a legal services organization, corporation, or other organization. This deeming rule implements the principle of loyalty of a lawyer to his client. It is based on the premise that a law firm is essentially

a lawyer and that the duty of loyalty binds each lawyer in the firm to each lawyer with whom he or she works. Article 14 of the Lawyers Law of China provides that a law firm is a practice body for lawyers. Article 11 of the Code of Conduct for Lawyers of the National Lawyers Association stipulates that lawyers may not engage in legal services as non-lawyers during their practice. Lawyers may only practice in one law firm. From the above definition, the American Bar Association, in the conflict of interest section of the Model Rules based on the principle of presumption, has made a broad interpretation of the extension of the law firm. In contrast, the definition of the law firm in China's Lawyers Law and the Code of Practice of Lawyers formulated by the National Lawyers Association is still a narrow interpretation and does not include the provision of legal services, such as legal consulting companies and other forms of organizations. Even so, given that China has a unified national examination for legal qualification, Chinese lawyers can practice throughout the country once they are admitted to the market, and law firms can set up branches throughout the country, making it easier to create super-sized law firms in the Chinese legal services market than in the US legal services market.

According to the author's research, as of 31 August 2022, according to the real-time statistics of the Ministry of Justice's National Lawyer Practice Integrity Information Publicity System, the total number of law firms in China was 37,038, with 4,516 law firms named after Beijing (including branch offices), 2,278 law firms named after Shanghai (including branch offices), and 6,794 law firms named after both Beijing and Shanghai. The total number of law firms named after the Shanghai region (including branch offices) was 2,278, and the total number of law firms named after both Beijing and Shanghai was 6,794, accounting for 18.34% of the total number of law firms nationwide. This part of the super-scale law firm's general branch lawyers or branch and branch lawyers conflict of interest frequently. The reasons for this are, in the author's view, firstly, that some of these firms do not have a mechanism to review the rules on conflict of interest for lawyers in accordance with the Lawyers Law and the Code of Conduct, and have set up a department for the coordination of conflicts of interest in respect of lawyers' caseload and remuneration in order to balance the interests of lawyers within the firm. Secondly, the formulation and implementation of conflict of interest rules by some of these firms are more concerned with their interests than with their duty of loyalty to their clients, coupled with the fact that the judicial, administrative organs and lawyers' associations in China do not strictly enforce the penalties for breaches of conflict of interest rules (for reasons that will not be discussed here). Thirdly, in China, anti-monopoly investigations, penalties, and litigation against the lawyers' profession have yet to be initiated. With the birth of over 10,000 law firms in China and the internationalization of competition in the legal services industry, if the legal profession in China still does not take the conflict of interest rules seriously, infringes on the legitimate rights and interests of clients and challenges the order of justice, it is bound to be subject to anti-monopoly investigations by international legal services organizations against the legal profession in China. Therefore, the author believes that the definition of "same law firm" in the conflict of interest rules should be expanded to include a general branch office, affiliated law firms under the same beneficial owner, legal consulting companies, and other institutions or organizations providing legal services. Secondly, a particular conflict of interest review committee should be set up to manage the conflict of interest of clients under the law for firms of 100 and over 1,000 members. Third, lawyers and law firms that violate conflict of interest rules should be punished and disciplined in accordance with the law as a warning to others.

2. Suggested measures to improve the conflict of interest rules for lawyers in China

The United States Model Rules have been in force for over a century, with the latest revision taking 17 years and finally being promulgated as a text with explanatory notes. The Rules of Conduct for Lawyers in China have also been revised several times, with a particular chapter on conflict of interest rules. However, as mentioned above, there are areas for improvement, such as shortcomings in the logical system and specific expressions of legislation. Therefore, according to local practice, the author believes that it would be an excellent choice to formulate a special national unified Conflict of Interest Rules for Lawyers, which can firstly solve the problem of legislative convergence between the Law on Lawyers, the Measures for Punishing Lawyers and Law Firms for Illegal Acts and the Rules of Conduct, and secondly unify the cognition of conflict of interest rules and regulate the practice of lawyers nationwide by formulating specific conduct rules. Finally, the conflict of interest rules formulated by the National Lawyers Association can be effectively dovetailed with the adjudication procedures of courts, protectorates, arbitral tribunals, and other judicial organs to safeguard better the order of the adjudication tribunals, the legitimate rights, and interests of clients and the legality and legitimacy of lawyers' practice activities.

2.1 How to formulate a uniform national conflict of interest rule for lawyers?

Through the comparison mentioned above of the conflict of interest rules of lawyers in China and the United States, we can draw on the excellent experience of others and combine the characteristics of "two-combination" management.Of the Chinese lawyer industry to formulate a conflict of interest rule in line with Chinese characteristics. Firstly, we should sort out the logical system of conflict of interest. The underlying logic of conflict of interest is based on the lawyer's duty of loyalty to the client, the lawyer's authority derived from the client's "trust," and the law firm's "trust" in the lawyer. The "trust" of the client and the "confidence" of the firm in the lawyer's assignment. Loyalty includes, firstly, recusal from conflicts of interest posed by a current or former client in the same case or proceeding; secondly, recusal from conflicts of interest arising from the lawyer's former duties, including those of a neutral third party such as a judge, prosecutor, arbitrator, mediator or notary; and thirdly, recusal from conflicts of interest arising from "personal" and "substantial interest" criteria. "The second is to clarify the types of conflicts of interest. The second is clarifying and scientifically classifying the conflicts of interest. These include conflicts of interest that are prohibited concurrently, conflicts of interest that can be expressly agreed to in writing (informed consent), conflicts of interest that can be shielded, conflicts of interest of a personal nature, conflicts of interest in commercial transactions, conflicts of interest in joint representation, conflicts of interest of corporate lawyers, conflicts of interest of public lawyers, conflicts of interest in litigation, conflicts of interest in lawyer mobility, conflicts of interest of neutral third parties, etc. Thirdly, the conflict of interest rules and the duties and obligations of lawyers in the judicial system is clarified. The provisions of the Criminal Procedure Law, Civil Procedure Law, Arbitration Law, People's Mediation Law, Administrative Punishment Law and other legal norms on conflict of interest of lawyers should be carefully studied and effectively integrated. The types of interpretation should not be blindly expanded. This is because the law should provide for severe violations of the law, not the standard of practice required by the profession's rules. Lawyers should comply with the provisions of the law. However, the rules on conflict of interest for lawyers should be, in essence, a legal professional conduct restraint mechanism formulated and regulated by the lawyers' association and enforced by the association, i.e., the rules on conflict of interest for lawyers as a professional rule should be higher than the provisions of the law.

2.2 Legal Liability of Lawyers for Violation of Conflict of Interest

At present, according to the Lawyers Law, the Administrative Punishment Law and the Measures for the Administration of Lawyer Practice of the Ministry of Justice, the Measures for Punishing Lawyers and Law Firms for Violations of the Law, a lawyer's violation of the conflict of interest rules will constitute an administrative penalty.According to the Code of Conduct for Lawyers' Practice of the National Lawyers Association and the Rules for Punishing Members of the Lawyers Association for Violations of the Law (for Trial Implementation), a lawyer's violation of the conflict of interest rules will constitute a professional penalty.As mentioned above, a high standard of rules of conduct for lawyers should be established, and professional penalties should be imposed for violations of the rules. As mentioned above, a high standard of rules of conduct for lawyers should be established, and it is appropriate to impose disciplinary sanctions for violations of the rules of the profession; of severe violations, such as violations of the Lawyers Law, the Measures for Punishing Lawyers and Law Firms for Violations of the Law, the Civil Procedure Law, the Administrative Procedure Law, the Criminal Procedure Law, the Arbitration Law and other serious violations, administrative and even criminal liability will be directly prescribed by law.

IV. CONCLUSION: Solutions to Lawyers' Conflict of Interest Rules in the New Technology

One lawyer put it this way: "All the rules that guide the conduct of lawyers, on which the legal profession relies, were developed before the advent of 21st-century technology. As a result, the rule book for use in this new century has not yet been written." Admittedly, the century-long revision of the Rules of Professional Conduct in the United States is perfect. However, its greatest regret is that it does not adequately take into account the profound impact of new technological developments on the profession in the 21st century that will directly and profoundly alter the practice of law.In March and April 2021, respectively, the LSB published Reshaping Legal Services: A Sector-wide Strategy (In March and April 2021, the LSB published Reshaping Legal Services: A Sector-wide Strategy and Striking the Balance: How Legal Service Regulation Can Foster Responsible Technological Innovation), both of which propose the development of legal technology to ensure that the law's ability to support society as a whole keeps pace with the times. As far as the conflict of interest rules are concerned, a more efficient and precise solution would be to use computer technology to establish an automated conflict of interest retrieval system on a firm-by-firm basis or to embed a firm information management system. The solution is to move from the systematization of rules in the 20th century to the systematization of rules in the 21st century. For example, the e Lawyer Law Firm Management System developed by L&T uses computer technology to write rules in the form of codes into the law firm's internal management system and to systematically identify and match the information on the law firm's lawyers and staff (including close relatives), clients (including those associated with the organization's clients), parties to the case (litigation or non-litigation), the substance of the case, and the progress of the case. The system automatically identifies and matches the information of the client (including information about the organization's affiliates), the parties to the case (litigation or non-litigation), the substance of the case, the progress of the case, etc., and activates the corresponding procedural measures according to the rules, including denial, opt-out, notifica-

tion, blocking (firewall) and informed consent. The author believes that in the future, through the continuous improvement and development of legal technology, it will be possible to achieve an online review and management and supervision mechanism for the institutional construction of rules, regulations, management, and standards in the area of conflict of interest for lawyers.

With regard to the supplementation and improvement of the conflict of interest rules system for lawyers in China under the new technology, firstly, the Law on Lawyers, the Measures for Punishing Lawyers and Law Firms for Violations of the Law and the relevant provisions of the Rules of Conduct should be revised and improved in the macro system, to clearly distinguish the specific types of professional sanctions and administrative penalties; secondly, the Law Society's Lawyers' Rules Committee should draft and formulate a unified national Conflict of Interest Rules for Lawyers based on thorough research and consultation. Finally, law firms should use legal technology to strengthen the review, management, and supervision of lawyers' conflicts of interest.

As mentioned above, the conflict of interest rules, as an essential rule of the lawyer's professional conduct system, is concerned with regulating the lawyer's practice, protecting the legitimate rights and interests of the client, and maintaining social justice. From the above rules, the conflict of interest rules are mainly related to the conflict between the lawyer's interest and the public interest, the conflict between the lawyer's interest and the client's interest, and the cross-conflict between the three. The question of whether lawyers act in their own interests, in the interests of their clients, or in the interests of society more generally is critical to how public policy should view self-regulation by lawyers. At the same time, increasing investment in the application of information technology innovation in this field, promoting the construction of the digital ecology of the lawyer industry, playing the supporting role of scientific and technological innovation, improving data centers and cloud services, enhancing the capacity of technical infrastructure operation and security, and building digital intelligent law firms are the requirements of the times in response to the development of legal technology and the change of the global governance system, and are also the way for the lawyer industry to practice Xi Jinping's thought on the rule of law and help the construction of China under the rule of law. It is also the way for the legal profession to implement Xi Jinping's thoughts on the rule of law and to help build China under the rule of law.

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