



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I have a good friend who is a lawyer at a small firm. Unfortunately, she recently has become the subject of a malpractice claim by a former client. She's told me a little about it, and based on my knowledge of her professionalism, I'm sure it's a claim without merit.

She has asked me to defend her and her firm in trying to get rid of this claim, and says that her insurer has agreed to defer to her choice since the amount of the claim is fully within her firm's deductible. We don't have any conflicts that would be a problem. We do have some unrelated cases where lawyers in her firm are on the other side of lawyers in our firm representing their clients, but no adversity to her firm itself. This isn't a problem, is it?

A: This representation should not be an issue, provided that both your firm and the firm that you would be representing consider whether a conflict exists under Model Rule 1.7(a)(2), which occurs when "there is a significant risk that the representation . . . will be materially limited by the lawyer's responsibilities to another client. . . or by a personal interest of the lawyer." The representation of a law firm by another law firm, when those firms are adverse to each other for other clients in other cases is discussed in ABA Formal Ethics Op. 97-406 (1997) (discussing similar language of previous version of Rule 1.7). The issues addressed in the opinion relate to potentially conflicting interests of the representing lawyer, in simultaneously advocating for the represented lawyer or firm in one matter, while advocating against the represented lawyer or firm in other matter(s), and the similar or corresponding interests of the represented lawyer. A material limitation conflict can arise under these circumstances depending upon the materiality and potential effect of the lawyers' responsibilities to other clients as well as the lawyers' own financial or other interests.

Each lawyer and firm involved must consider whether a variety of considerations (a non-exclusive list is contained in ABA Op. 97-406) may materially limit either lawyer's/firm's ability to represent either or any of their clients, or might cause either of them to temper their advocacy, e.g., the relative size or importance of the matters, the anticipated fees, the nature of any of the relationships, etc. If the answer is no, then the representation is not an issue. If the answer is yes, then in order to proceed, the lawyer must then conclude that representation of other client(s) will not in fact be adversely affected, and must also obtain informed consent of both the prospective law firm client and the third-party client(s).

In the situation posed above, although all necessary facts may not be provided, it appears that the size of the matter and resulting fee would not be such that it would cause a material limitation of the lawyers' or their firms'

ability to fully represent other clients while proceeding with the law firm representation, but the nature of the relationship between the lawyers and any other relevant factors should be considered.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 125 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.