



# Dear Ethics Lawyer™

## The Legal Ethics Project. Supporting professionalism with information.

**Q:** Dear Ethics Lawyer,

I represent a client in connection with the planned sale of a local financial institution. The client believes that acquirer/investor interest in the sale will be primarily local/regional. It knows that our firm represents a number of the sorts of wealthy individuals and institutional players who may be interested and has asked me to share this opportunity. I am not aware of any reason doing so would be imprudent. What are the risks of doing this?

**A:** Although merely advising one client of a business opportunity that may exist with another client is not prohibited by the Model Rules, there are risks to consider. First, you should be very clear who you are representing. If you are representing the seller, then you could not be adverse to a buyer who is also a current client without appropriate informed consent. You also must consider that one or both of the clients may ultimately be unhappy with any resulting dealings between them, and may blame you or your firm. You should be clear in making any introductions between clients that you are not expressing any legal opinion about the advisability of them doing business—you could not do that as it would place you in a concurrent conflict situation between two current clients. You also should be clear that you are not providing any advice or recommendation concerning business aspects of any resulting dealings. Among other things, it is likely that business advice is not a covered professional service under your legal malpractice insurance.

In addition, from a risk management point of view, you should consider whether you have knowledge of anything about either client which you could not disclose that the other would likely want to know in determining whether to have a relationship, e.g., allegations of misconduct in other business matters. For example, if you are representing the seller and have relevant knowledge about a buyer that you could not disclose, this could well create a "material limitation" conflict, and result in a claim that you should have taken this into account in making the introduction without disclosure. Exercise caution in matchmaking between clients, especially when your firm is involved in the matter for one of the clients.

**Special Note re 4/1/24 Dear Ethics Lawyer:** Comments and discussion about this column are always welcome. In response to the last issue, concerning adversity arising from cross-examination of a witness who happens to be a client, William Wernz of Minneapolis noted that in certain circumstances cross-examining a fact witness who is a client in other matter(s) might not create adversity, such as when the witness is truly disinterested in the matter and does not care that you may be testing their observations or recollection, and/or when the witness provides consent to the questioning. This is correct, and The Ethics Lawyer should have been less categorical: cross-examination of a witness who is a client is likely to create a conflict and should be considered with care, but there are exceptions. Thanks Bill, for the correction/clarification.

*The Ethics Lawyer*

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## 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](mailto: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.