



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

We represent a large company in corporate and real estate matters that generate a lot of fees for our firm. They have an equally large competitor in the same industry which they view as an arch-enemy, but we are not currently adverse to it. The competitor has asked for our help representing it in a city where we have an office to make a small acquisition. This is probably a one-shot thing that will be over in 90 days or so. The conflict check comes back clean. Can we do it?

A: "[S]imultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic interests . . . does not ordinarily constitute a conflict of interest." Model Rule 1.7, Cmt. 6. Of course, you should consider whether there would be any potential "material limitation" issues under Rule 1.7(a)(2), because of the magnitude of your representation of the existing client or other factors, and whether additional protection of confidential information should be implemented, e. g., potential ethical wall insulating teams working for each client. Subject to these considerations, this may only be what is often referred to as a "business conflict," i.e., a matter that you could accept under the Rules of Professional Conduct, but that you may choose not to out of concern for harm to your existing client relationship.

In dealing with this question, remember your obligations under Model Rule 1.6 (and Model Rule 1.18 to a prospective client). For example, you may be inclined to ask your existing client if they would be upset if you accept the unrelated matter, but in order to do so, you would first need the consent of the prospective client to disclose its identity or anything about the prospective representation. Likewise, you would need consent of your existing client to disclose information concerning your representation of it to the prospective client. Ultimately you may just have to weigh the potential impacts to the business of the law firm, and determine whether or not to accept any business risk of taking the new matter.

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.