



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

We live in a complicated world. I've been a lawyer for a while now, and most of my friends and acquaintances are lawyers who do more or less the same things I do, and I'm dating (non-exclusively) another lawyer who also has a similar practice (in another firm). In representing clients, I often find myself opposite a friend or acquaintance, and now have a matter opposite the lawyer I have a dating relationship with. I'm struggling whether any of this needs to be disclosed to clients, requires a waiver, or is just flat out-of-bounds.

A: Comment 11 to Model Rule 1.7 addresses conflicts when lawyers "closely related by blood or marriage" represent different clients in the same or substantially related matters." ABA Formal Op. 494 (2020) provides similar guidance when a lawyer's relationship to opposing counsel is an "intimate relationship" (defined as, e.g., cohabiting, engagement to, or an "exclusive intimate relationship"), a friendship of various degree, or that of a mere acquaintance.

The question in looking at a relationship, in the context of the lawyers' respective roles in the matter, is whether it will create a "material limitation" conflict under Model Rule 1.7(a)(2). This rule states that a concurrent conflict exists when there is a "significant risk" that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another current or former client, a third person or the lawyer's own person interest. In the context of personal relationships, this implicates protection of confidences, the duty of loyalty and exercise of independent professional judgment. The opinion addresses relationships in degrees of closeness, noting that some relationships create a Rule 1.7(a)(2) conflict, others that do not may still need to be disclosed to a client under Rule 1.4 duty of communication, while others may require no action. Intimate relationships should be disclosed to clients and a waiver obtained if the lawyer reasonably believes that competent and diligent representation can be provided. The same is true for "close friendships," those with indicia such as vacationing together, regularly exchanging gifts, regularly socializing, engaging in a mentor-mentee relationship, etc. More casual friendships or acquaintances do not trigger these concerns.

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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.

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.