



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I have a delicate question. I have always had a good relationship with my inhouse contact for a long standing corporate client, but recently it's taken a turn – a mutual attraction has arisen. I find myself drawn to this person, engaging in extended conversations and complimenting them on their appearance as well as how they are handling matters. Some of our meetings have been over dinner, and some of our conversations have become a bit flirty. Then last night, as we were texting each other, the client representative asked if I would be interested in getting together personally sometime, and sent me a sexually revealing picture. I responded in kind, saying that would be nice and attaching a picture of my own. I am guessing that I may not be able to have an actual sexual relationship with the client representative while the representation continues, but has what I've done so far crossed any lines?

A: You are correct that an actual sexual relationship with a client, that does not pre-date the representation, violates the Model Rules of Professional Conduct. Rule 1.8(j), adopted in 39 states, states that "[a] lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced." Comment 22 to the Rule states that this prohibition also applies to sexual relations between a lawyer (outside counsel or in-house counsel) and constituents of organizational clients who supervise, direct or regularly consult with that lawyer. Comments 20 and 21 state the rationale for the Rule, based in the lawyer's responsibility as a fiduciary. The lawyer may be in a position that exploits an imbalance in the relationship. In addition, emotional involvement may impair the lawyer's ability to provide unimpaired and independent professional judgment. Communications may occur in circumstances that compromise the protection of attorney-client privilege. The client's own emotional involvement may undermine their ability to provide adequate informed consent. Furthermore, the circumstances of the lawyer's personal interests may create a Rule 1.7(a)(2) "material limitation" conflict. In addition, Rule 1.13 imposes a duty on you to represent the interests of the organization, not the constituent with whom you work and may have a relationship with. This may compound the possibility of a Rule 1.7(a)(2) material limitation conflict, if your ability to provide advice and counsel to the organization

client is limited or compromised by your emotions toward or involvement with the constituent. While you may not have violated the letter of Rule 1.8(j), you should examine whether the relationship you now have with the client representative violates or could violate the Rules in other ways, considering the factors mentioned above. Could emotional involvement and desire cloud your ability to provide independent and competent representation (Rule 1.1) or reduce the ability of you and the client representative to communicate about, and the client representative to make decisions with informed consent (Rules 1.2, 1.4)? Are you adequately protecting attorney-client privilege? Do your emotions and interests materially limit your ability to provide the representation (Rule 1.7(a)(2))? These are all real risks in your situation. Disciplinary authorities are focusing on these factors in cases not involving actual sexual relations. For example, in 2023, the Minnesota Supreme Court suspended a lawyer who engaged in a series of sexually suggestive communications to a divorce client, escalating to an explicit email chain with invitations to meet in person outside of business hours. The disciplinary proceeding alleged (and the lawyer admitted) that this conduct created a Rule 1.7(a)(2) material limitation conflict, violated Rule 1.1 concerning competence, and was an attempt to violate the Rule on sexual relations punishable as a violation of rule 8.4(a). *In re Petition for Disciplinary Action Against William A. Winter*, 991 N.W.2d 278 (Minn. 2023) (Mem.). See Susan Humiston, *Unprofessional Relationships With Clients*, [bbc0823 corrected.pdf](#) (mncourts.gov) (Aug.9, 2023). The safer and better course of action in your matter, for you and especially for your client, is to withdraw from the matter to remove yourself from what has become a nonprofessional relationship, and eliminate any effect on your client's matter or the judgment of yourself or your client. Although Rule 1.8(j) issues are not imputed from an individual to that individual's law firm, Rule 1.8(k); if a Rule 1.7(a)(2) conflict exists, a waiver based on informed consent would need to be obtained from the organizational client (through another authorized representative) for a different lawyer in your firm to pick up the representation. Alternatively, because this is an organizational client, if your in-house contact were to step back in favor for a different representative at the company to supervise or direct the legal work you are handling, that would also mitigate the issue. 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.

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