



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am a lawyer who represents businesses in corporate transactions. For the last few weeks, I have been going out with a law school classmate. Initially it was just as friends, but the last couple of times, there was a spark that made this feel more like dating. We have gone slowly and have not engaged in a fully intimate relationship yet, although I'm hoping that is where things are going. I think my former classmate feels the same way.

Last night my dating partner called to announce that they have been offered a dream job working within the law department of my biggest client. What do we do now? Does this mean that under the ethics rules we have to put a freeze on our relationship unless I stop representing the client? And if there is an issue here, does it extend to disqualify the rest of my firm from representing this client?

A: Rule 1.8(j) unequivocally prohibits a lawyer from having sexual relations with a client unless a consensual sexual relationship between them existed prior to the attorney-client relationship. Comment 17 to the rule explains that the lawyer-client relationship is a fiduciary one, involving the need for the highest trust and confidence of the client. Against this backdrop, unequal power and knowledge can result in client exploitation, emotional impairment of professional judgment, and blurring of lines concerning protection of confidential information communicated in a professional capacity (privileged) v. a personal capacity (not privileged). Comment 18 states that these concerns are diminished in the case of a consensual intimate relationship already established before the legal representation, justifying the exception to the rule, but that the lawyer must always also consider whether, in the context of the representation, there would be a "material limitation" conflict under Rule 1.7(a)(2), e.g. some impairment of the lawyer's ability to provide fully professional representation because of the lawyer's own interests or emotions.

In your case, the attorney-client relationship with the company that your dating partner will now join came first, so that timing doesn't fall within the exception to the rule. But, is the individual you are dating, although they will now be a constituent of your corporate client, considered to be "the client" for purposes of the ethics rules? For example, Model Rule 1.13(a) makes it clear that in cases of organizational representation, the client is the organization, not its constituents.

Does that mean that rule 1.8(j) doesn't apply to this situation? The answer is "maybe," depending on the role of your dating partner in your representation of the organizational client. Comment 19 to Rule 1.8 states that when the client is an organization, "a lawyer for the organization (whether inside counsel or outside counsel) [is prohibited from] a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters." Thus your ability to proceed to intimacy with your dating partner without an ethical issue will depend upon whether their new role will involve regular interaction of those types with you in your representation of the organizational client. If not, then there is no issue. In this regard, a potential issue could be avoided with disclosure and structuring of the representation so that the two of you are not involved together in the same matters for the organization.

Finally, this issue does not get imputed by Rule 1.8(k) to other lawyers in your law firm. Therefore, if you proceed with the intimate relationship, and the role of your dating partner with the organization does disqualify you from the representation, it does not operate to disqualify others in your firm. Rule 1.8, Comment 20.

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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 132 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.