

# Conflicts of Interest: How Close a Relationship Is Too Close?

**Representing a client whose interests are adverse to those of a lawyer's employee's relative is not absolutely barred, but the lawyer must proceed with caution when deciding whether to take on the representation.**

BY DEAN R. DIETRICH

## Question

I have been contacted by a potential client who is considering suing the nephew of my legal assistant. Do I have a conflict of interest?

## Answer

You probably do not have a conflict of interest if you represent this new client in a legal claim against a nephew of your legal assistant, but you should analyze the situation (and your feelings) to determine whether you should accept that representation.

The primary focus in analyzing this situation is whether your representation of the new client will be in any way restricted or affected by the relationship with your legal assistant and whether there will be any effect on your loyalty to the new client. In other words, you must analyze whether your advocacy for the new client will be negatively affected because you know that you are bringing a claim against someone related to your legal assistant.

Under SCR 20:1.7, a lawyer must assess whether there are conflicting loyalties or circumstances that will prevent the lawyer from providing “competent and diligent representation” to the new client. Under the conflict rule, the lawyer must first determine whether the representation of the new client would be directly adverse to the representation of another client; that does not apply in this situation because you are not representing the nephew.

The lawyer also must determine whether there is “a significant risk” that the representation of the new client would be “materially limited” by the lawyer’s responsibilities to a third person (the legal assistant) or by a personal interest (a desire to not create tension with the legal assistant). If there is not a significant risk of either type of material limitation, the lawyer may represent the new client if the lawyer reasonably believes that the lawyer can provide “competent and diligent representation” and not be limited by some loyalty or impairment of advocacy because of the family relationship between the opposing party and the legal assistant.

In many situations, the lawyer could engage in the representation of the new client because the lawyer’s representation would not be adversely affected by the relationship between the legal assistant and the opposing party. This will depend, however, on the facts and circumstances of that relationship and the legal assistant’s feelings. It is vital that the lawyer take steps to ensure that information about the representation is not shared with the opposing party. **WL**

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