



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am defending a huge piece of commercial litigation. I, and others in our firm, have been opposite to plaintiff's counsel Jane Smith in a number of hard but well-fought cases and there is mutual respect. Smith has now approached me about retaining our firm to represent her in connection with an allegation that she has employed an illegal immigrant. While unrelated to anything we are in litigation over for other clients, are there conflict issues here?

A: You and Smith's firm should each consider whether there is a "material limitation" conflict under Model Rule 1.7(a)(2). For you, the considerations are whether in any ongoing or future cases with Smith that you could represent your other clients with the same appropriate level of vigor and effort in opposition to Smith, given a business and fee interest in the matter representing Smith, and whether you would do the same for Smith, notwithstanding the importance of the litigation in which you oppose her. For Smith, the issue is the opposite side of the same coin, i.e., will her dependence on your firm in the immigration matter undermine her ability to represent others in opposition to clients represented by you and your firm with the same vigor and effort. The nature and relative significance of Smith's engagement of your firm and the other respective matters, as well as whether you are opposing each other in the same matter or it involves others in your respective firms, are relevant to this question and relevant to whether you must or should disclose this to your respective third-party clients and obtain their consents. See ABA Formal Ethics Op. 97-406 (1997).

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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.