



# Ohio Board of Professional Conduct

## **OPINION 2020-04**

Issued June 12, 2020

Withdraws Adv. Op. 88-021

### **Concurrent Representation of Clients With Disparate Interests Involving the Same Matter**

**SYLLABUS:** A law firm must withdraw from the concurrent representation of multiple clients or seek their informed, written consent when the clients' disparate interests as to the outcome of the same matter materially interferes with the firm's lawyers' independent professional judgment in representing either client.

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# Ohio Board of Professional Conduct

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**SYLLABUS:** A law firm must withdraw from the concurrent representation of multiple clients or seek their informed, written consent when the clients' disparate interests as to the outcome of the same matter materially interferes with the firm's lawyers' independent professional judgment in representing either client.

**QUESTION PRESENTED:** Whether a law firm that is contracted to a public entity to provide general legal services on an as needed basis may represent a group of landowners opposed to a zoning variance sought by an independent entity that the public entity finances, monitors, and evaluates pursuant to state law.

**APPLICABLE RULES:** Prof.Cond.R. 1.7, 1.10

**OPINION:** The requesting law firm has a one-year contract with a community mental health board ("board") to provide legal services on an as needed basis. The board contracts with an agency to provide services and facilities for domestic violence victims in the area. The agency is seeking a land use variance for a shelter for domestic violence victims. The law firm also represents a group of landowners that is opposed to the agency's plans to locate a shelter in their neighborhood. The board supports the agency's efforts to locate the shelter in the neighborhood and seek appropriate zoning variances. It finances, monitors and evaluates the agency's activities pursuant to Oh. Rev. Code §340 *et.seq.* Based on the facts presented, it is assumed for purposes of this opinion that the

board has not requested legal advice or services from the law firm concerning the zoning variance request by the agency.

A law firm's decision to engage in a concurrent representation of two clients in unrelated matters will result in a conflict of interest if the representation of one client will be directly adverse to another current client or if there is a substantial risk that the firm's representation of the client will be materially limited by other interests. Prof.Cond.R. 1.7(a)(1)-(2). In a concurrent representation, the principles of loyalty and independent professional judgment remain fundamental to the client-lawyer relationship and the interests of other clients or the lawyer's own interests cannot be permitted to dilute a lawyer's loyalty to either client. Prof.Cond.R. 1.7, cmt. [1]. Adv. Op. 2019-1. Based on the concurrent representation presented, the law firm must first analyze whether there exists a direct adversity or material limitation conflict of interest before continuing to engage in the representation of the landowners.

*Direct adversity conflict*

A direct adversity conflict exists when the law firm or lawyer assists one client in asserting a claim against another client of the firm in the same litigation or transaction. Prof.Cond.R. 1.7(a)(1), cmt. [11]. In addition, a law firm may not advocate for one entity in one matter against an entity the law firm represents in another matter, even when the matters are unrelated. *Id.* In the question presented, the client landowners are directly opposed to the agency due to its zoning variance request. However, the board, not the agency, is the firm's client. While the board is supportive of the agency's zoning variance request it is not a real party in interest to the matter because it is not seeking the zoning variance. Consequently, the board's interest in the outcome of the matter cannot be reasonably viewed as directly adverse to the client landowners under Prof.Cond.R. 1.7(a)(1).

*Material limitation conflict*

Absent direct adversity, the law firm must next determine if a conflict may arise due to a substantial risk that its lawyers' ability to consider, recommend, or carry out an appropriate course of action for a client will be materially limited by the firm's responsibilities to another client, a former client, a third person, or by the firm's own interests. Prof.Cond.R. 1.7(a)(2). A material limitation conflict arises when there are disparate interests between two current clients that will materially interfere with the

lawyer's independent professional judgment in representing either client. Prof.Cond.R. 1.7, cmt.[14].

Based on the facts presented, a material limitation conflict is not immediately apparent since the law firm's provision of legal services to the board and its representation of the landowners are wholly separate and unrelated. In addition, the law firm represents the board on an as needed basis under a one-year contract, but has not been asked to advise the board on the agency's variance request. Upon closer examination, however, it would be reasonable to conclude that the board's overall interest in supporting the agency's zoning variance may compromise the firm's representation of the landowners opposing the variance. More specifically, the law firm's ability to carry out the appropriate course of action or pursue other legal alternatives on behalf of the landowners may be materially limited by the overall interests of the board concerning the matter and the firm's duty of loyalty to, and its inherent financial interest in maintaining its standing client-lawyer relationship with, the board. Based on these factors, the Board concludes that there exists a substantial risk that the representation of the landowners will be materially limited by the disparate interests of the two current clients and the law firm's duty of loyalty to the board. Consequently, Prof.Cond.R. 1.7(a)(2) requires the law firm to withdraw from the representation of one of the clients or pursue a waiver of conflict of interest from both clients to continue the representation.

*Amelioration of conflict of interest*

When a material limitation conflict exists under Prof.Cond.R. 1.7(a)(2), Prof.Cond.R. 1.7(b) permits the continued representation of both clients under certain conditions. The assigned lawyers in the law firm may continue representation if (1) the lawyers are able to provide competent and diligent representation to the client, (2) the clients give informed consent, confirmed in writing, and (3) the representation is not otherwise prohibited by law and does not involve the assertion of a claim by one client against another in the same proceeding. Prof. Cond. R. 1.7(b)(1)-(3). Under the facts presented, the Board concludes that concurrent representation is not prohibited by law, but that informed written consent from both clients would be required in order for the law firm to advocate on behalf of the landowners against the zoning variance requested by the agency. Absent the required waiver from both clients, the law firm must withdraw from the representation of one client. Additionally, screening of the lawyers assigned to each client as a method to continue the concurrent representation is not permissible as

the conflicts arising from the representation by each lawyer are imputed to the rest of the law firm. Prof.Cond.R. 1.10(a).

**CONCLUSION:** A law firm's representation of multiple clients in separate and unrelated matters must be analyzed to determine if a potential conflict of interest exists. In some situations, the overall interests of each client in the outcome of the same matter, and firm's duty of loyalty and financial interest in maintaining a client-lawyer relationship with the board, create a substantial risk that the firm's representation of the one client may be compromised by interfering with the firm's lawyers' independent professional judgment. The conflict may be ameliorated if the law firm is able to obtain informed written consent from both clients to the representation. Absent consent, the law firm must withdraw from representation of one client.