
Coates' Canons Blog: When is a Close Relationship with Your Client Too Close?

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With new county commissioners, school board members, and municipal councilpersons being sworn in after last month's local elections, the face and voice of the client has changed for more than one local government attorney. What happens when one of those faces and voices is related to the attorney? Is it okay if the town attorney's daughter was just elected mayor? What if the county attorney's brother-in-law is appointed county manager?

The conflict provisions in the North Carolina Rules of Professional Conduct focus primarily on concerns involving multiple clients, answering questions such as whether a county attorney may simultaneously represent criminal defendants being prosecuted by the county sheriff's department (no, RPC 73) or whether an attorney representing the county on appellate matters may also represent a private litigant in a claim against the county department of social services (yes, with consent from all parties, RPC 131).

The Rules of Professional Conduct also recognize that a conflict may arise when there is only a single client involved. Rule 1.7(a)(2) states that a conflict of interest exists if the attorney's representation of a client may be "materially limited" by a "personal interest" of the attorney. The rule doesn't limit its coverage to family members. Any relationship, be it familial, financial, or social, that might sway the attorney's loyalty can create a conflict.

The comments to Rule 1.7 and much of the caselaw arising under this provision discuss situations in which the attorney has a personal relationship with an *opposing* party or attorney. But an attorney representing an organizational client can also be materially limited in the ability to zealously represent that client when the attorney has a personal relationship with an officer, employee or agent of that same client. Government attorneys and those representing other organizations must be focused on the best interests of the organization itself, not on the interests of the individuals acting on behalf of the organization.

If one of those individuals is the spouse or sibling or even the life-long best friend of the attorney, it wouldn't be difficult to imagine a scenario in which the attorney may be (improperly) more concerned with the interests of the individual rather than those of the organization. This risk exists for a corporate attorney who is related to that corporation's CEO just as it does for a government attorney who is related to one of that government's elected officials. If the county attorney is married to a commissioner, how effective will that attorney be in representing the county's interests if the commissioner-spouse is later accused of misconduct? How will the attorney respond if the commissioner-spouse insists that the attorney not reveal to the rest of the board the substance of "confidential" conversations with the attorney about county business?

I think these same risks exist when a government attorney is related to an *employee* of the government, regardless of that employee's position or level of responsibility. Although the initial concerns over divided loyalties or communication problems might be minimal if the employee is in a relatively junior position, the possibility of future conflicts of interest still remain. A minimum-wage custodian is just as likely as the county manager to be adverse to his county employer at some point down the road.



Rule 1.7 permits a representation to continue despite a conflict of interest if the attorney reasonably believes that the client will receive “competent and diligent representation” and if the client gives informed *written* consent. The attorney must explain to the client “the risks and advantages, if any, of representation burdened by a conflict of interest, as well as any reasonably available alternatives,” and then give the client the opportunity to raise questions and concerns. Comment 20, Rule 1.7. Only then should a government attorney proceed with a representation in the face of a personal conflict. With much caution, I should add, always on the lookout for changed circumstances which might render the representation impossible.