

The prohibition on sex with a client
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Rule 1.8(j), Minnesota Rules of Professional Conduct (MRPC), states that a lawyer shall not have sexual relations with a client, unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. As stated in Comment 7 to the Rule, a sexual relationship between the lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, and may limit the lawyer's ability to exercise independent judgment on behalf of the client.

Where a sexual relationship exists, no actual limitation on the representation need be shown to establish a violation. Even a consensual relationship is prohibited, as it may affect the lawyer's professional judgment. Nevertheless, the Director's Office has continued to receive complaints alleging sexual contact between a lawyer and a client.

The rule is principally intended to protect vulnerable clients from being pressured into an unwanted relationship and from an attorney possibly delaying a matter in order to continue a relationship. There are certain specific situations that are exempted from the prohibition. As noted, a lawyer may represent a client where there is a pre-existing consensual sexual relationship.

In addition, there are special rules for the representation of organizations. The individual who oversees the representation and gives instructions to the lawyer on behalf of the organization is the client, for purposes of this rule. In other words, a lawyer who represents a large corporation is not restricted from having a relationship with others of that corporation's employees. Instead, he or she is only restricted from seeing employees of that corporation who supervise or direct the representation. Similarly, in-house lawyers representing a corporate or governmental entity are not restricted from seeing all other employees of the corporation or government. While such relationships may be a violation of the entity's employment rules, to establish a disciplinary violation the Director would be required to show a substantial risk of a material limitation on the representation, in accord with Rule 1.7(a)(2), MRPC.

Conflicts arising from a sexual relationship with a client, unlike most other conflicts, are not imputed to other members of a lawyer's firm. In other words, lawyers in a firm who do not represent a particular client are not prohibited from sexual relations with that client under this rule.

When the Director's Office receives a complaint involving allegations of sexual relations with a client, and if the complainant is not the affected client, the rule requires the Director to consider the client's statement regarding whether the client would be unduly burdened by the investigation or charge. Rule 1.8(j)(4), MRPC. While it may seem somewhat curious that the Rules first establish that sexual relations result in a per se violation of the rules, and then direct the Director's Office possibly to not discipline for the relationship if the complaint originates from someone who is not the client, it is consistent with the purpose of the rule to protect vulnerable clients. This provision also may be an acknowledgement of the difficulty of proving such a relationship without the cooperation of the client. Many other conflicts may be waived with informed consent, confirmed in writing, and it is not realistic to expect the client to give written consent to a sexual relationship. Thus, this part of the rule allows for reasonable discretion on the part of the Director when circumstances warrant.

The discipline imposed for established violations of this rule have varied. In certain circumstances, such as where the relationship was an isolated incident, and little actual harm occurred, private admonitions have been issued. However, most cases have resulted in suspensions of 30 to 90 days. *In re Alley*, 577 N.W.2d 714 (Minn. 1998); *In re Johannson*, 675 N.W.2d 626 (Minn. 2004).

The simplest and likely best path for lawyers is to avoid romantic entanglements with clients entirely. Such advice is easy to give but may be difficult to follow. Woody Allen is credited with saying "The heart wants what it wants." While many attorney-client sexual relationships are not based on the heart, for an attorney whose heart truly wants his client, he should either end the representation before pursuing his client, or put his advances on hold until the representation has concluded.