

# AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

**Formal Opinion 494**

**July 29, 2020**

## **Conflicts Arising Out of a Lawyer's Personal Relationship with Opposing Counsel**

*Model Rule 1.7(a)(2) prohibits a lawyer from representing a client without informed consent if there is a significant risk that the representation of the client will be materially limited by a personal interest of the lawyer. A personal interest conflict may arise out of a lawyer's relationship with opposing counsel. Lawyers must examine the nature of the relationship to determine if it creates a Rule 1.7(a)(2) conflict and, if so, whether the lawyer reasonably believes the lawyer will be able to provide competent and diligent representation to each affected client who must then give informed consent, confirmed in writing.*

*To assist lawyers in applying Rule 1.7(a)(2), this opinion identifies three categories of personal relationships that might affect a lawyer's representation of a client: (i) intimate relationships, (ii) friendships, and (iii) acquaintances. Intimate relationships with opposing counsel involve, e.g. cohabiting, engagement to, or an exclusive intimate relationship. These relationships must be disclosed to clients, and the lawyers ordinarily may not represent opposing clients in the matter, unless each client gives informed consent confirmed in writing. Because friendships exist in a wide variety of contexts, friendships need to be examined carefully. Close friendships with opposing counsel should be disclosed to clients, and, where required as described in this opinion, their informed consent obtained. By contrast, some friendships and most relationships that fall into the category of acquaintances need not be disclosed, nor must clients' informed consent be obtained. Regardless of whether disclosure is required, however, the lawyer may choose to disclose the relationship to maintain good client relations.<sup>1</sup>*

### **I. Introduction**

The ABA Model Rules of Professional Conduct address conflicts arising when lawyers “closely related by blood or marriage” represent “different clients in the same matter or in substantially related matters.” This guidance appears in Comment [11] to Model Rule 1.7, which reads:

When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. . . . [A] lawyer related to another lawyer, e.g., *as parent, child, sibling or spouse*, ordinarily may not represent a client in a

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<sup>1</sup> This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2020. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in individual jurisdictions are controlling.

matter where that lawyer is representing another party, unless each client gives informed consent. . . .<sup>2</sup>

The Model Rules do not address other types of personal relationships with opposing counsel.<sup>3</sup> But these other personal relationships may also create conflicts of interest. Because changing living patterns suggest that more people are living in households and arrangements that do not correspond to traditional categories,<sup>4</sup> this opinion offers guidance on conflicts that may arise from personal relationships with opposing counsel that fall within the Rules but are not specifically addressed by the Comments. In explaining these obligations, this opinion relies heavily on ABA Formal Opinion 488, issued in September 2019, which addresses judges' personal relationships with lawyers or parties that may require disqualification or disclosure."<sup>5</sup>

Section II below sets out the framework for analysis and identifies three categories of potential relationships between opposing counsel, drawing on the analysis in ABA Formal Opinion

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<sup>2</sup> MODEL RULES OF PROF'L CONDUCT R. 1.7 cmt. 11 (2020) (emphasis added) [hereinafter MODEL RULES].

<sup>3</sup> By contrast, there is significant authority, from the ABA and elsewhere, addressing business relationships with opposing counsel. For opinions on a lawyer's obligations when negotiating or seeking employment with the opposing firm. *See, e.g.*, ABA Comm. on Ethics & Prof'l Responsibility Formal Op. 96-400 (1996); N.C. State Bar Formal Op. 3 (2016); D.C. Bar Op. 367 (2014); N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 1991-1 (1991); Pa. Bar Ass'n Legal Ethics & Prof'l Responsibility Comm. Advisory Op. 2007-300 (2007); Ky. Bar Ass'n Formal Op. E-399 (1998). There is also significant authority addressing a lawyer's obligations when the lawyer represents or has represented opposing counsel in an unrelated matter. *See, e.g.*, ABA Comm. on Ethics & Prof'l Responsibility Formal Op. 97-406 (1997) ("lawyers cannot simultaneously have a lawyer-client relationship and represent third party clients whose interest are adverse if a reasonable lawyer would conclude that his relationship as a lawyer for or client of opposing counsel may materially limit and would adversely affect the lawyer's representation of his 'third-party' client"; opinion discusses when disclosure and consent will permit the representation; "imputation analysis differs for the representing lawyer and the represented lawyer"); Utah State Bar Ethics Advisory Comm. Op. 14-05 (2014) (both affected clients may consent to conflict caused by one's lawyer representing opposing counsel in unrelated malpractice or discipline case); Conn. Bar Ass'n Informal Op. 2012-10 (2012) (personal injury lawyer and insurance defense counsel who are opponents in many cases and one represents the other in unrelated litigation must determine if the representation would materially limit the representation of each lawyer's clients and, if so, must obtain the affected clients' informed consent, confirmed in writing); Me. Prof'l Ethics Comm'n Opinion 205 (2011) (lawyer who is representing opposing counsel in an unrelated matter must determine if there is a significant risk of materially limiting his ability to represent either client and may seek informed consent to continued representation of each client if the lawyer reasonably believes the lawyer can give competent diligent representation to each); N.J. Advisory Comm. on Prof'l Ethics Op. 679 (1995) (conflict of interest caused by lawyer's representation of opposing counsel in unrelated matter may be waived with informed consent); Iowa State Bar Ass'n Ethics & Practice Guidelines Comm. Advisory Op. 92-28 (1993) (lawyer may represent a frequent opposing counsel in an unrelated matter); N.Y. State Bar Ass'n Comm. on Prof'l Ethics Op. 579 (1987) (lawyer may represent opposing counsel in unrelated litigation with client's informed consent if no effect on their independent professional judgment); Ill. State Bar Ass'n Advisory Op. 724 (1981) (no conflict for opposing counsel where one previously represented the other).

<sup>4</sup> For example, according to U.S. Census Bureau data from November 2018, "[t]he median age at first marriage in the United States has continued to rise in recent years." The number of young adults living with an unmarried partner has also increased. For example, "[a]mong young adults 18 to 24, cohabitation is now more prevalent than living with a spouse." *See* U.S. CENSUS BUREAU RELEASES 2018 FAMILIES AND LIVING ARRANGEMENTS TABLES, <https://www.census.gov/newsroom/press-releases/2018/families.html> (Nov. 14, 2018).

<sup>5</sup> ABA Comm. on Ethics & Prof'l Responsibility Formal Op. 488 (2019) [hereinafter ABA Formal Op. 488].

488. The categories here are: (i) “intimate relationships,” (ii) “friendships,” and (iii) “acquaintances.”<sup>6</sup> This opinion explains the relevant considerations in these circumstances.

## II. Analysis

Model Rule 1.7(a)(2) provides that in the absence of informed consent confirmed in writing a lawyer may not represent a client if “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.” Comment [11] explains that when opposing counsel are related by blood or marriage “there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment.”<sup>7</sup> The Committee concludes that these risks also arise when there are close personal or intimate relationships between lawyers who represent opposing clients. How lawyers should analyze these relationships for purposes of Rule 1.7(a)(2) is discussed below in Sections A, B, and C. There are general principles, however, that apply to all of them.

First, not all personal relationships with opposing counsel create a conflict that would require client informed consent or even disclosure. Some relationships with opposing counsel are so casual that they would not affect a lawyer’s independent professional judgment. For other relationships, a lawyer’s duty of communication under Rule 1.4 might obligate the lawyer to disclose a relationship, even if the lawyer believes that the relationship would not create a conflict under Rule 1.7. For still other relationships, a conflict based on personal relationships with opposing counsel exists and may be waived if the lawyer “reasonably believes that the lawyer will be able to provide competent and diligent representation to [the client]” and the lawyer obtains the affected client’s informed consent, confirmed in writing.<sup>8</sup>

The reasonableness of the lawyer’s belief will depend on the circumstances. “Reasonable” is defined in Model Rule 1.0(h).<sup>9</sup> For instance, a lawyer’s independent judgment is likely to be

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<sup>6</sup> See *id.* at 1, 2, 4-6. Some different considerations affect judicial disclosure and disqualification, e.g. judges must appear to be impartial as well as be impartial in fact, but the categories and considerations set forth in Formal Opinion 488 are useful for lawyers when analyzing their personal relationships with opposing counsel, as described in this opinion.

<sup>7</sup> By contrast, some jurisdiction’s rules explicitly address the types of personal relationships discussed in this opinion. See, e.g., CAL. RULES OF PROF’L CONDUCT R. 1.7(c)(2) (2018) (addressing “intimate personal relationship”); IOWA RULES OF PROF’L CONDUCT R. 1.8(i) (2012) (including cohabiting lawyers and lawyers in any “romantic capacity”); OR. RULES OF PROF’L CONDUCT R. 1.7 (2020) (including “domestic partner”); VA. RULES OF PROF’L CONDUCT R. 1.8(i) (2020) (including a lawyer “intimately involved with another lawyer”); WASH. RULES OF PROF’L CONDUCT R. 1.8(k)(1) (2015) (including “intimate relationship with another lawyer”); and W. VA. RULES OF PROF’L CONDUCT R. 1.7 cmt. [11] addressing “sharing living quarters with another lawyer”).

<sup>8</sup> MODEL RULES R. 1.7(b)(1). If a lawyer believes that informed consent of a client due to the lawyer’s relationship with opposing counsel is required, the lawyer should confer with opposing counsel. If opposing counsel disagrees that informed consent is required, the lawyer should consider whether the issue should be raised with the court if the matter is in litigation, and whether the lawyer has an obligation pursuant to Model Rule 8.3(a) to report opposing counsel. Model Rule 8.3(a) reads: “A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.”

<sup>9</sup> Model Rule 1.0(h) reads: “‘Reasonable’ or ‘reasonably’ when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.” See also Model Rule 1.0(i) which reads: “‘Reasonable

materially limited if due to the personal relationship with opposing counsel the lawyer would refrain from filing a well-founded motion for sanctions against opposing counsel. In that circumstance, the conflict may not be waivable. In addition, if the lawyer's personal relationship is one that is not known to others and the lawyer is therefore hesitant to disclose it to the client, the lawyer may not be in a position to seek the client's informed consent. For example, if the personal relationship with opposing counsel is an affair that the lawyer wishes to keep secret, the lawyer may be unable to comply with the rule's requirements of disclosure and informed consent. In that situation the lawyer is unlikely to be able to commence or continue the client-lawyer relationship.

Second, in determining whether a personal interest conflict exists, the lawyer should consider the lawyer's role in the matter. A lawyer who is sole or lead counsel in a matter is more likely to have a disqualifying conflict than a lawyer who has a subordinate or tangential role, such as researching discrete issues or drafting sections of papers to be filed, where that lawyer has little or no direct decision-making authority in the matter and minimal contact with the opposing counsel.<sup>10</sup>

Third, even when the lawyer has obtained informed consent confirmed in writing from the affected client, the lawyer must not reveal information relating to the representation unless permitted by one of the exceptions in Model Rule 1.6(b). Additionally, such a lawyer must take reasonable measures to assure that no confidential information is inadvertently disclosed to the opposing counsel with whom the lawyer has the personal relationship.<sup>11</sup> Inadvertent disclosure could occur, for example, if papers relating to the representation are left in view or telephone conversations are overheard.

Fourth, if a lawyer undertakes representation in which the lawyer has a personal relationship with opposing counsel and later determines that the lawyer will no longer be able to provide competent and diligent representation to the client because of the personal relationship, the lawyer must withdraw from the representation.<sup>12</sup>

Finally, personal interest conflicts ordinarily are not imputed. As Rule 1.10(a)(1) provides:

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless (1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant

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belief' or 'reasonably believes' when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable."

<sup>10</sup> Subordinate lawyers may have to consult with supervisory lawyers in order to withdraw or move to withdraw. A subordinate lawyer, or any other lawyer who is not lead counsel, should disclose the relationship to a supervisor and seek advice on how to proceed in the circumstances, consistent with this opinion. *See also* MODEL RULES R. 5.1 & 5.2.

<sup>11</sup> *See* MODEL RULE R. 1.6(c): "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." *See also* MODEL RULE R. 1.6 cmt. [18].

<sup>12</sup> *See, e.g.*, MODEL RULE R. 1.16(a), which provides in relevant part, "[a] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct . . .". This obligation to withdraw may arise if a personal relationship develops during the course of a representation.

risk of materially limiting the representation of the client by the remaining lawyers in the firm.

For close family relationships, Rule 1.7, cmt. [11] explains: “[t]he disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated.”<sup>13</sup> Similarly, a conflict arising when a lawyer seeks employment with an opposing law firm is not ordinarily imputed.<sup>14</sup> The Committee concludes, as have other ethics committees, that conflicts arising out of the types of personal relationships discussed in this opinion also are not ordinarily imputed under Rule 1.10.<sup>15</sup> Imputation would be appropriate, for example, when other lawyers at either firm also have personal relationships with the opposing counsel or where the personal relationships involve managing partners. In such circumstances, the broader ties to the opposing counsel’s firm may influence the lawyer’s independent judgment.

#### A. *Intimate Relationships*

Lawyers who cohabit in an intimate relationship should be treated similarly to married couples for conflicts purposes. The same is true for couples who are engaged to be married or in exclusive intimate relationships. These lawyers must disclose the relationship to their respective clients and ordinarily may not represent the clients in the matter, unless each client gives informed consent confirmed in writing, assuming the lawyers reasonably believe that they will be able to provide competent and diligent representation to each client.<sup>16</sup>

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<sup>13</sup> MODEL RULE R. 1.7 cmt. [11].

<sup>14</sup> ABA Comm. on Ethics & Prof’l Responsibility Formal Op. 96-400, at 8 (1996). For situations where the negotiating lawyer’s conflict might be imputed, *see id.* at note 12. *See also* D.C. Bar Ethics Op. 367 (2014).

<sup>15</sup> *See, e.g.*, State Bar of Ariz. Advisory Op. 01-12 (2001) (finding that a conflict created by “romantic relationship” between a public defender and a police officer is not imputed to the entire public defender’s office); State Bar of Mich. Op. R-3 (1989) (regarding lawyer spouses (or their firms) representing opposing clients; no imputation unless the lawyer spouses or the lawyers litigating the cases have a personal interest in the outcome of the litigation); N.C. State Bar Formal Op. 2019-3 (2019) (stating that where there is an “ongoing” and “sexually intimate relationship” between a public defender and a prosecutor there is no imputation “so long as the conflict ‘does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm [or office]’”).

<sup>16</sup> Comment [11] to Rule 1.7 provides in relevant part: “[A] lawyer related to another lawyer, e.g. as parent, child, sibling *or spouse*, *ordinarily* may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent.” (Emphasis added.) Opinions from several jurisdictions agree that intimate and cohabiting relationships should be treated like spousal ones. *See, e.g.*, State Bar of Ariz. Advisory Op. 01-10 (2001) (stating that attorney in Legal Defender’s Office who is cohabiting with an attorney in the County Attorney’s Office may work opposite each other on the same case only if: (i) both attorneys believe that the representation will not be materially limited by their relationship and (ii) both obtain informed consent by the clients; “[t]he conflict created by the cohabiting relationship is not imputed to other members of the offices”); State Bar of Mich. Op. R-3 (1989) (finding cohabiting lawyers must follow the same rule as lawyer spouses; they may not represent clients who are adverse unless the clients are informed of the relationship and give their consent to the representation; dating lawyers representing adverse parties also have obligations: they should “disclose the relationship to the clients if their relationship is sufficiently close that it could raise questions in the minds of the clients as to whether their interests would be zealously served”; “[l]awyers should err on the side of caution and should disclose such relationships or decline representation . . . if there is any possibility that the clients would consider the existence of the lawyers’ dating relationship to be detrimental to the lawyer-client relationship.”); N.C. State Bar Formal Op. 2019-3 (2019) (noting that assistant district attorney and criminal defense lawyer in an intimate relationship may not be adversaries in a case unless they disclose the relationship to and obtain written informed consent from the affected clients and the appropriate governmental official).

Opposing counsel who are in some type of intimate relationship, but are not exclusive, engaged to be married or cohabiting, must carefully consider whether the relationship creates a significant risk that the representation of either client will be materially limited by the lawyers' personal relationships.<sup>17</sup> The prudent course would be to disclose to the affected clients and obtain their informed consent.<sup>18</sup>

### *B. Friendships*

Friendships may be the most difficult category to navigate. On the one hand, an adversary may be a dear and longtime friend or someone with whom the lawyer regularly socializes. On the other hand, an adversary may be considered a "friend" even though contact is occasional, brief, or superficial. As noted in ABA Formal Opinion 488:

'Friendship' implies a degree of affinity greater than being acquainted with a person . . . the term connotes some degree of mutual affection. Yet, not all friendships are the same; some may be professional, while others may be social. Some friends are closer than others.<sup>19</sup>

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Failure to disclose intimate relationships and secure adequate consents can result in discipline, disqualification or other significant consequences. A conviction may be reversed. *See* *People v. Jackson*, 213 Cal. Rptr. 521, 522 (3d Dist. Ct. App. 1985) (reversing conviction; defense counsel failed to inform defendant of his "dating" relationship with the prosecutor; the two "appeared as counsel in directly adverse roles representing defendant and the People respectively at the preliminary examination, at the pretrial settlement conferences, and at trial"); *Commonwealth v. Stote*, 922 N.E.2d 768, 778 (Mass. 2010) (Marshall, C.J.) (denying reversal after evidentiary hearing, and noting, "[w]e remind members of the bar of their professional obligation under rule 1.7(b) [analogous to M.R. 1.7(a)(2) and (b)(1)&(4)] to disclose to their clients any intimate personal relationship that might impair their ability to provide untrammelled and unimpaired assistance of counsel."). Fees may be forfeited. *See* *DeBolt v. Parker*, 560 A.2d 1323 (N.J. 1988) (finding lawyer spouses represented adverse interests; fees allowed but only after finding adequate disclosure and consent under then NJ RPC 1.8(i): "[a] lawyer related to another lawyer as parent child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship").

<sup>17</sup> *See, e.g.*, State Bar of Mich. Op. R-3 (1989) (opposing counsel who are dating but not cohabiting or engaged must determine whether the relationship is sufficiently close to require disclosure to and informed consent of affected clients); N.Y. State Bar Ass'n Comm. on Prof'l Ethics Op. 660 (1993) ("a couple who date frequently" may not appear opposite one another in a criminal case; "a dating relationship between adversaries is inconsistent with the independence of professional judgement required by [the New York Rules]"; "whether other lawyers [in defense counsel's firm] will be disqualified depends on the facts and circumstances"). *See also* ABA Formal Op. 488, *supra* note 5, at 6-7 (discussing judges' close personal relationships).

<sup>18</sup> This opinion does not address personal relationships involving previous marriages or cohabitations, engagements, and exclusive dating arrangements that have ended. Adversaries in such situations, however, must also determine pursuant to Rule 1.7(a)(2) whether there is "a significant risk that the representation of one or more clients will be materially limited" by the lawyer's prior relationship with opposing counsel and act accordingly. *See also* ABA Formal Opinion 488, *supra* note 5, at 6 (stating that "close personal relationships" include "an amicable divorce" and being a "godparent" of a lawyer's or party's child). This opinion also does not address when an existing relationship between opposing counsel ends during the course of the representation. The lawyer whose relationship ends while the representation continues must analyze whether the lawyer's new circumstances create a significant risk that the representation of the client will be materially limited by the change in the relationship and, if so, whether the lawyer must disclose the new circumstances to the affected client and obtain the client's informed consent to continued representation. A factor to be considered would be whether the breakup is amicable or hostile.

<sup>19</sup> ABA Formal Op. 488, *supra* note 5, at 4. In addition, as noted in footnote 11 of Formal Opinion 488, "[s]ocial media, which is simply a form of communication, uses terminology that is distinct from that used in this opinion. Interaction on social media does not itself indicate the type of relationships participants have with one another either

Close friendships with opposing counsel should be disclosed to each affected client and, when circumstances require as described further below, their informed consent obtained. ABA Formal Opinion 488 provides guidance here, too. The following are indicia of friendships that would require disclosure and, ordinarily, informed consent:

[Lawyers who] exchange gifts at holidays and special occasions; regularly socialize together; regularly communicate and coordinate activities because their children are close friends and routinely spend time at each other's homes; vacation together with their families; share a mentor-protégé relationship developed while colleagues . . . [or] share confidences and intimate details of their lives.<sup>20</sup>

By contrast, friendships that might require disclosure to the affected clients but will not ordinarily require consent from clients include lawyers who “once practiced law together [and] may periodically meet for a meal when their busy schedules permit or, if they live in different cities, try to meet when one is in the other's hometown.”<sup>21</sup> Similarly, adversaries who “were law school classmates or were colleagues years before [and] may stay in touch through occasional calls or correspondence, but not regularly see one another”<sup>22</sup> will typically not require the consent of affected clients and may not even require disclosure. Whether either consent or disclosure is required depends on the lawyer's considered judgment as to whether Model Rule 1.7(a)(2) applies and, if so, whether the lawyer reasonably believes the lawyer can competently and diligently carry out the representation notwithstanding the conflict.

In sum, opposing lawyers who are friends are not *for that reason* alone prohibited from representing adverse clients. The analysis turns on the closeness of the friendship. If there is a significant risk that the representation of one or more clients will be materially limited by a lawyer's relationships, the lawyers must disclose the relationship to each affected client and obtain that client's informed consent, confirmed in writing, assuming the lawyers reasonably believe they will be able to provide competent and diligent representation to each affected client. If the lawyers cannot do so, one or both of the lawyers must decline or withdraw from the affected representations, consistent with Model Rule 1.16.

### C. Acquaintances

Acquaintances are relationships that do not carry the familiarity, affinity or attachment of friendships. Lawyers, like judges, “should be considered acquaintances when their interactions . . . are coincidental or relatively superficial, such as being members of the same place of worship, professional or civil organizations, or the like.”<sup>23</sup> Lawyers who are “acquaintances” may see each other at such gatherings, even frequently, without feeling a close personal bond. They might regularly meet at bar association or other business events, present continuing education programs together, or serve on bar association committees or boards together where their relationships may be collegial but not necessarily fall into the category of a “friend” that could materially limit the lawyer's independent professional judgment on behalf of a client. Similarly, lawyers who

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generally or for purposes of this opinion. . . . The proper characterization of a person's relationship with an opposing counsel depends on the definitions and examples used in this opinion.”

<sup>20</sup> ABA Formal Op. 488, *supra* note 5, at 4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 4.

regularly see each other at civic or social events but do not make any particular effort to seek each other's company do not have the type of close personal friendship requiring disclosure and informed consent. Again, as described in ABA Formal Opinion 488, the following without more do not create a close personal relationship:

[Lawyers] might both attend bar association or other professional meetings; they may have represented co-parties in litigation. . . ; they may meet each other at school or other events involving their children or spouses; they may see each other when socializing with mutual friends; they may belong to the same country club or gym; they may patronize the same businesses and periodically encounter one another there; they may live in the same area or neighborhood and run into one another at neighborhood or area events, or at homeowners' meetings; or they might attend the same religious services. . . . Generally, neither . . . seeks contact with the other, but they greet each other amicably and are cordial when their lives intersect.<sup>24</sup>

Lawyers who are acquaintances of opposing counsel need not disclose the relationship to clients, although the lawyer may choose to do so. Disclosure may be advisable to maintain good client relations. It may be helpful to inform a client that the lawyer has a professional connection with opposing counsel and then explain how that will not materially limit the lawyer's objectivity but may, in fact, assist in the representation because the lawyers can work collegially.

### III. Conclusion

A lawyer's personal relationship with opposing counsel may create a conflict under Model Rule 1.7(a)(2). Lawyers must examine the nature of the relationship to determine if there is a significant risk that lawyer's representation of the client will be materially limited by the lawyer's personal relationship and, if so, whether the lawyer reasonably believes the lawyer will be able to provide competent and diligent representation to each affected client and each affected, who must then give informed consent, confirmed in writing.

Using the guidelines in this opinion, lawyers should evaluate whether the relationship is a close personal or intimate relationship, a friendship, or the adversary is merely an acquaintance. Cohabiting, intimate and similar relationships with opposing counsel must be disclosed, and the lawyers ordinarily may not represent clients in the matter, unless each client gives informed consent confirmed in writing. Because friendships exist in a wide variety of contexts, friendships need to be examined closely. Close friendships with opposing counsel should be disclosed to clients and, where appropriate, as discussed in Part IIB, their informed consent, confirmed in writing, obtained. By contrast, some friendships and most relationships that fall into the category of acquaintances need not be disclosed, nor is clients' informed consent required. Regardless of whether disclosure is mandated, however, the lawyer may choose to disclose the relationship. Disclosure may even be advisable to maintain good client relations.

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<sup>24</sup> *Id.*

**AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND  
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