



**New York State Bar Association  
Committee on Professional Ethics**

**Opinion 994 (12/5/13)**

**Topic:** Conflict of interest arising from lawyer's nonlegal employment by a law client.

**Digest:** A lawyer who coaches a sports team of a school district may also provide legal services to that school district unless there is a significant risk that the lawyer's professional judgment on behalf of the school district would be adversely affected by the lawyer's financial or other personal interest as a coach.

**Rules:** 1.7, 1.10

**FACTS**

1. The inquirer is a lawyer who recently began working for a law firm that "represents and provides general counsel for school districts," including a school district that has previously employed and paid a stipend to the lawyer to coach one of the school sports teams. During part of the year, the school's team is run by the school district, and during another part, the team members participate in the sport under the auspices of a private club (the "Club"). The inquirer posits that to continue receiving stipends from the school district would create a conflict of interest given the inquirer's new position with the law firm, and asks whether it would be permissible to continue coaching if (a) the inquirer were to coach solely as an employee of the Club, or (b) the inquirer were to forgo the stipends and coach for the school district as a volunteer.

**QUESTION**

2. May a lawyer whose firm represents a school district also work as a coach for one of the district's sports teams, and does the answer depend on whether the lawyer's coaching services are compensated by the school district, compensated by an affiliated private club, or not compensated at all?

**OPINION**

3. Seeking to avoid any possibility of conflict, the inquirer starts from the premise that a lawyer in a law firm may not be paid by a client of the firm to provide nonlegal services. But that premise goes beyond what is required by the rules of legal ethics. In a wide range of foreseeable circumstances, a law firm may ethically provide legal services to a school even though the school pays one of its lawyers to provide nonlegal services such as sports coaching. Indeed, the very lawyer employed as a coach could, in many circumstances, also provide legal

services to the school.

4. The governing standard is found in Rule 1.7(a)(2) of the New York Rules of Professional Conduct (the “Rules”). That Rule provides that in the absence of appropriate client consent, “a lawyer shall not represent a client if a reasonable lawyer would conclude that ... there is a significant risk that the lawyer’s professional judgment on behalf of a client will be adversely affected by the lawyer’s own financial, business, property or other personal interests.”

5. Before considering whether the firm as a whole could provide legal services to the school district, we first consider whether the inquiring lawyer could provide such services. The relevant analysis, made always from the viewpoint of a reasonable lawyer, is whether the inquirer’s financial or other personal interest as a coach would create a significant risk of adversely affecting the inquirer’s professional judgment. The inquirer’s employment as a coach may incline the inquirer toward benefiting the school, but that interest generally would not interfere with exercising professional judgment that would also be for the benefit of the school. There may be little or no risk of adverse effect if, for example, the legal work on behalf of the school district were unrelated to the lawyer’s work as coach. Whether payment of a stipend would create such a risk could depend on its size, but even if large enough to give the inquirer a significant financial interest in its continuation, there would be no conflict unless that interest were to create a significant risk of interfering with professional judgment on behalf of the client.

6. It is possible to imagine particular circumstances in which employment as a coach could create a conflict. For example, there might be a significant risk that the inquirer’s professional judgment would be adversely affected by personal interests if the inquirer were retained to defend the school district in a wrongful termination action filed by another coach of the same team; to defend a Title IX lawsuit alleging insufficient support of girls’ sports teams; or to advise the district whether to implement policies that would constrain the ability of certain students to participate on the team.

7. To assess the risk in such cases would require knowing the facts in some detail. If the facts in a particular legal matter give rise to a conflict under Rule 1.7(a) and the inquirer chooses to continue as a coach, then the inquirer could not represent the school district in that matter unless the school district could and did waive that conflict. Waiver would be available if the inquirer reasonably believed it possible to provide competent and diligent representation to the school district despite the conflict, and the school district gave informed consent confirmed in writing. *See* Rule 1.7(b).

8. If a conflict would preclude the inquirer from handling a particular legal matter for the school, then that conflict would also be imputed to the other lawyers in the inquirer’s firm. Absent appropriate waiver of the conflict, those other lawyers would be prohibited from representing the school in that matter. *See* Rule 1.10(a). The imputed conflict may, however, be waived by the school under appropriate circumstances. *See* Rule 1.10(d). Even if there were no reasonable prospect that the *inquirer* could adequately represent the school, rendering the inquirer’s underlying conflict unwaivable under Rule 1.7(b)(1), the *imputed* conflict may still be waivable if other lawyers in the firm reasonably believe that they could provide competent and diligent representation to the school. *See* N.Y. State 968 ¶25 (2013).

9. We have addressed only those constraints arising from the rules of legal ethics. There may also be relevant legal rules in statutes or regulations relating to employees of the school district, or in internal policies of the school district or law firm. The inquirer would be well advised to consult any such rules, as they may limit outside employment or require its disclosure and approval.

## **CONCLUSION**

10. Even though a lawyer works for a school district as a volunteer or paid sports coach, the lawyer or the lawyer's firm may provide legal services to the school district unless there appears to be a significant risk that the lawyer's professional judgment on behalf of the school district would be adversely affected by the lawyer's financial or other personal interest as a coach.

(36-13)