



30 Bank Street  
New Britain, CT 06051  
P (860) 223-4400  
F (860) 223-4488

***Standing Committee on Professional Ethics***

March 28, 2023

**Informal Opinion 2023-02**  
**Representation of Multiple Union Members**

You are one of three staff attorneys who represent a public employee union with thousands of members. Under applicable union rules, the union is obligated to provide members with legal representation for certain types of matters, including investigations arising out of complaints concerning a member's alleged misconduct. You have asked whether you may represent a union member under investigation while other union staff attorneys simultaneously represent another union member who is a potential witness in the investigation. You note that the member who is a witness may have legal interests that are adverse to the subject of the investigation.<sup>1</sup>

As a threshold matter, we conclude that under Rule 1.10 of the Rules of Professional Conduct, the conflicts of each union attorney would be imputed to all other attorneys in the organization. Specifically, Rule 1.10(a) provides that "[w]hile 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." The Official Commentary to Rule 1.10 in turn provides that "[f]or purposes of the Rules of Professional Conduct, the term 'firm' denotes lawyers in a law partnership, professional corporation, sole proprietorship, or other association, authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization." *See also* Official Commentary to Rule 1.0 ("[W]ith respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct"). Accordingly, assigning different attorneys employed by the union to different individual clients would not resolve the conflict. Because the union attorneys are employed by the same organization, their conflicts would be imputed to each other.

The question then becomes whether under the circumstances described in the request, union staff attorneys may simultaneously represent both the subject and a witness to the same investigation, where the interests of each

---

<sup>1</sup> We understand there is a body of substantive labor law holding that in some circumstances the union itself, and not its constituent members, is the union lawyer's only client, even with respect to grievances and disciplinary proceedings in which the union is obligated to provide a defense to its members. *See Peterson v. Kennedy*, 771 F.2d 1244, 1258 (9th Cir. 1985), *cert. denied*, 475 U.S. 1122 (1986); *Waterman v. Transport Workers' Union Local 100*, 176 F.3d 150 (2d Cir. 1999); *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 51, 76 (1991); *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); Joseph L. Paller Jr., "The Duty of Fair Representation," p. 168 n.26 (collecting cases); *see also* DC Bar Ethics Opinion 314 (noting cases). Because the premise of your inquiry is that the individual union members involved in the investigation would be the clients, we do not address a scenario where the union is your only client.



30 Bank Street  
New Britain, CT 06051  
P (860) 223-4400  
F (860) 223-4488

client may be adverse. Rule 1.7(a) of the Rules of Professional Conduct provides that “except as provided in subsection (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest,” which exists where “(1) the representation of one client will be directly adverse to another client” or “(2) 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.” Rule 1.7(b) in turn provides that, where there is a concurrent conflict of interest, simultaneous representation of multiple clients may only proceed if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or the same proceeding before any tribunal; and (4) each affected client gives informed consent, confirmed in writing. Lawyers considering whether to undertake joint representations should recognize that not all conflicts are waivable. *See also* Official Commentary to Rule 1.7 (explaining that “some conflicts are nonconsentable”).

Based on the admittedly limited facts presented in the inquiry, we believe that the conflict inherent in attempting to simultaneously represent both the target of the investigation and an individual witness with adverse legal interests likely is not waivable. We note that even where the target of the investigation and witness seem to be completely aligned at the outset, the direction and outcome of an investigation is impossible to predict. As this Committee recognized in Informal Opinion 07-10, “[c]oncurrent representation that appears permissible under Rule 1.7(b) and that is acceptable to the clients at the outset can be burdened by conflicts as new information becomes available, a possibility that one should fully discuss with potential clients from whom conflict waivers are requested.”

In conclusion, on the facts presented, we conclude that it likely would not be permissible under Rules 1.10 and 1.7 of the Rules of Professional Conduct for staff attorneys employed by the same union to simultaneously represent the subject of an investigation and a potential witness to the same investigation with potentially conflicting legal interests.

THE COMMITTEE ON PROFESSIONAL ETHICS

*Kim E. Rinehart*

---

BY Kim Rinehart, Chair

88888888\829\4880-8139-6316.v1