

The logo features the text "Dear Ethics Lawyer" in a black, cursive script font, with a small "TM" trademark symbol to the right. The text is set against a background of a light-colored, textured surface, possibly a piece of paper or parchment, with some faint, illegible handwritten markings. A bright orange diagonal stripe is visible in the top right corner of the overall page design.

Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

The name of a client in an unrelated matter is identified as a potential trial witness in litigation by an opposing party. Based on the general description of the nature of her testimony, it appears that she will be a material adverse witness and should be deposed. Would it be a conflict for me to take her deposition in the litigation given that our representation of her is unrelated? What about simply having an informal conversation with her about her anticipated testimony?

A: The Model Rules do not recognize any sort of "friendly adversity." Deposing a client, or even meeting informally with a client who you expect to be an adverse witness to test or question their testimony is representation of one client against another. "[A] directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit." Rule 1.6, Comment 6. See also ABA Formal Ethics Op. 92-367 (1992). In addition, you likely also have a Rule 1.7(a)(2) "material limitation" conflict in that it would be very difficult to press your client (in or out of a formal proceeding) in order to discredit, question or undermine her adverse testimony.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 125 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.