

The Ethical Considerations of Representing Multiple Parties

Jul 09 2015

Practice Area: Restructuring and Insolvency

Rule 1.7 of the American Bar Association (ABA) Model Rules of Professional Conduct, which underlie the rules of professional conduct for every state bar except California, prohibits lawyers - both bankruptcy and nonbankruptcy practitioners alike - from representing multiple clients in matters where the clients are directly adverse to each other, regardless of the clients' consent. "Loyalty and independent judgment are essential elements in the lawyer's relationship to a client," and neither element can be fully satisfied when a lawyer's clients are directly adverse to one another.

The Second Circuit's long-standing statement on this point bears repeating: Conflicts of interest arising out of concurrent representation "must be measured not so much against the similarities in litigation, as against the duty of undivided loyalty which an attorney owes to each of his clients." Even where parties are not directly adverse, lawyers must be cognizant of the possibility that representing one party may materially limit the representation of another client. In these instances, representation is generally prohibited unless (1) the lawyer reasonably believes that he/she will be able to provide competent and diligent representation to each client, and (2) each client provides informed consent, confirmed in writing.

Bankruptcy courts enforce professional responsibility rules over the attorneys before them, meaning that lawyers can be disqualified from representing a party if a court determines in its discretion that the rules have been breached. Unfortunately, the ABA Comments to Rule 1.7 do not specifically address how conflicts of interest can be resolved in the bankruptcy context where the competing interests of the parties involved may constantly evolve over the course of the bankruptcy proceedings. This leaves many bankruptcy practitioners scratching their heads as they try to figure out whether the representation of multiple parties - such as creditors - is permissible, and if it is, how they may represent each of those parties fairly and equally when nuanced conflict issues abound.

[Read more...](#)
