



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

Opinion 1300 (08/31/2026)

Topic: Imputation of conflicts when the relative of an attorney in a public defender office is a government official

Digest: If a public defender office is a government office (as opposed to a non-government public defender office), then a public defender's conflict of interest arising under Rule 1.7(a)(2) based on personal interests will not be imputed to other lawyers in the government office because the imputation rules in Rule 1.10 do not apply within government law offices.

Rules: 1.0(h), 1.7(a), 1.10, 1.11

FACTS:

1. The inquirer is an assistant public defender ("APD") in County A. County A maintains a Public Defender's office (the "Office"), which has both a Civil Division and a Criminal Division. All of the lawyers in the Civil Division and Criminal Division are full-time employees of the Office and are thus government employees. The inquirer is in the Civil Division of the Office.
2. A close relative (the "Relative") of an assistant public defender in the Criminal Division ("Criminal Division APD") has been appointed to head a different County A government office that often interacts with certain matters handled by the Civil Division, but not the Criminal Division. The Relative is not a lawyer.
3. At some point, to assist with staffing needs, Criminal Division APD volunteered to represent clients in Civil Division matters (in addition to continuing to represent clients in Criminal Division matters). County A declined Criminal Division APD's offer to assist with Civil Division matters because County A concluded that, due to his Relative's appointment to head a County A office with which the Civil Division interacts, Criminal Division APD is conflicted from working on Civil Division matters. County A also concluded that Criminal Division APD may continue to work on criminal matters, provided the Criminal Division APD is screened from all matters handled by the Civil Division.

QUESTIONS:

4. Does the Criminal Division APD have a conflict of interest arising under Rule 1.7(a)(2) with respect to working on matters in the Civil Division?

5. If so, is the Criminal Division APD's conflict imputed (i) to the other lawyers in the Civil Division, or (ii) to the entire Public Defender's Office, including the Criminal Division, or (iii) not at all?

6. If the conflict is imputed, would the imputation extend to specific types of cases within the Civil Division for which the Criminal Division APD might have a conflict and if so, which cases?

OPINION:

Does Criminal Division APD Have a Conflict of Interest?

7. Rule 1.7(a) of the New York Rules of Professional Conduct (the "Rules"), which was amended by the New York Courts effective November 10, 2025, provides that, except as provided in Rule 1.7(b), a lawyer shall not represent a client if a reasonable lawyer would conclude that the representation involves a "concurrent conflict of interest." A concurrent conflict of interest may occur in several different scenarios:

- The representation of one client will be "directly adverse" to another client. See Rule 1.7(a)(1); or
- There is a "significant risk" that the lawyer's "independent professional judgment" on behalf of a client will be "adversely affected" by, or the representation of one or more clients otherwise will be "materially limited" by, either:
 - the lawyer's responsibilities to (A) another client, (B) a former client or a (C) a third person; or
 - the lawyer's own financial, business, property or other personal interests. See Rule 1.7(a)(2).

8. The first issue here is whether the Criminal Division APD would have a concurrent conflict by representing a client in the Civil Division, given that a close Relative heads an agency that interacts with the Civil Division. The facts here would not involve Criminal Division APD's representation of two different clients so Criminal Division APD would not be "directly adverse" to another client. Thus, Criminal Division APD would not have a conflict under Rule 1.7(a)(1).

9. Similarly, this is not a situation where the Criminal Division APD's professional judgment on behalf of a client might be adversely affected by responsibilities to another client, a former client or a third party. Comment [9] to Rule 1.7 gives, as an example of a responsibility to a third party, a fiduciary duty arising from a lawyer's service as trustee, executor or corporate director. Nothing in the inquiry indicates that the Criminal Division APD has any responsibilities, fiduciary or otherwise, to the Relative. And the inquiry does not suggest that Criminal Division APD has responsibilities to any other client or former client, such as a client who is a witness in any matter in the Civil Division – see N.Y. State 1261 (2023) (attorney may not represent a current client in connection with providing testimony against a former criminal defense client "unless the former client gives informed consent in writing and the disclosure of such representation will not be prejudicial or detrimental to the interests of the current client").

10. The issue remains, however, whether a reasonable lawyer would conclude that there is a serious risk that the Criminal Division APD's "independent professional judgment" on behalf of a Civil Division client would be adversely affected by, or the representation of one or more Civil

Division clients otherwise will be materially limited by, the lawyer's own financial or other personal interests regarding the Relative. This is a factual question and we lack sufficient knowledge of the facts to answer. We thus cannot determine whether the Criminal Division APD has a conflict under Rule 1.7(a)(2).

Vicarious (Imputed) Disqualification

11. If a reasonable lawyer would find that Rule 1.7(a) is triggered (as County A concluded and as we are assuming for purposes of our analysis), the next issue is whether the disqualification of the Criminal Division APD from handling Civil matters should be imputed to other lawyers in the Office.

12. Rule 1.10(a) provides a general rule for the imputation of a conflict from a conflicted lawyer to other lawyers "associated in a firm." As relevant here, Rule 1.10(a) states:

(a) 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 Rule 1.7 . . . except as otherwise provided therein, unless:

- (1) the prohibition is based on a lawyer's own financial. business. property or other personal interests within the meaning of Rule 1.7(a)(2), and
- (2) under the circumstances, a reasonable lawyer would conclude that there is no significant risk that the representation will be materially limited or that the independent professional judgment of the participating lawyers in the firm will be adversely affected.

13. The County Public Defender's Office constitutes a "firm" for purposes of Rule 1.10(a). In prior opinions we have concluded that a public defender's office is a "firm" as defined in the Rules. See N.Y. State 975 (2013) and N.Y. State 862 (2011). Comment [1] to Rule 1.10 states:

For purposes of these Rules, the term "firm" includes, but is not limited to, . . . lawyers employed in a legal services organization [or] . . . *a government law office* . . . See Rule 1.0(h). . . [Emphasis added.]

14. Rule 1.0(h), which defines the term "firm," is consistent with our prior opinions on this issue. Rule 1.0(h) states:

"Firm" . . . includes, but is not limited to, a . . . lawyers employed in a qualified legal assistance organization [or] *a government law office*. [Emphasis added.]

15. Because the County A Public Defender Office is a "firm" comprised of government lawyers, the question of whether the Criminal Division APD's conflict is imputed to other lawyers in the firm so that they, too, are disqualified from representation is governed by Rule 1.11, not by Rule 1.10. As amended by New York's Appellate Division effective July 1, 2025, Rule 1.10(h) states: "The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11 and not by this Rule [1.10]."

16. Within Rule 1.11, the applicable provision is Rule 1.11(d)(1), which states: “Except as law may otherwise expressly provide, a lawyer currently serving as a public officer or employee: (1) is subject to Rules 1.7 and 1.9 but is not subject to Rule 1.10” (Emphasis added.) Thus, given that the Criminal Division APD is “a lawyer currently serving as a public officer or employee” within the meaning of Rule 1.11(d)(1), a conflict arising under Rule 1.7(a)(2) would not be imputed under Rule 1.10, which expressly does not apply here. Moreover, no provision of Rule 1.11 would impute Criminal Division APD’s conflict to other lawyers in the County A Public Defender Office. Nor does any applicable provision of Rule 1.11 require a government law office to screen a lawyer with a conflict under Rule 1.7.

17. Because we conclude that Criminal Division APD’s personal interest conflict (if any) would not be imputed to other lawyers in the County A Public Defender Office, we do not address the question regarding which specific types of cases might require imputation.

18. We note that in many places in New York a public defender office is not a “government law office” within the meaning of Rule 1.0(h), and that imputation of conflicts of interest arising under Rule 1.7 would therefore be governed by Rule 1.10, not by Rule 1.11. But since the July 1, 2025 amendments to Rule 1.10, conflicts of interest within a government law office are not governed by Rule 1.10.

CONCLUSION:

19. If a public defender office is a government office (as opposed to a non-government public defender office), then a public defender’s conflict of interest arising under Rule 1.7(a)(2) based on a lawyer’s personal interests will not be imputed to other lawyers in the government office because the imputation rules in Rule 1.10 do not apply within government law offices.

(18-26)