



Conflicts of Interest When Representing Bidders and Potential Buyers

Legal malpractice claims continue to increase in severity. One of the most consistent areas of practice in which more and more legal malpractice claims are filed, and demands continue to skyrocket in value, is business transactions. Often, plaintiff's lawyers exploit the fact that transactional lawyers, deal-makers by nature, struggle to identify and properly resolve conflicts of interest. There is some new guidance to help lawyers recognize and resolve conflicts.

On January 3, 2024, the New York City Bar Association published [Formal Opinion 2024-1](#), titled "Ethical Issues Arising from the Representation of Two or More Bidders Competing for the Same Asset." In short, the opinion finds that "in most situations [when representing two bidders competing for the same asset], the lawyer and/or law firm would have a conflict of interest; however, again in most situations, the conflict is likely to be waivable...."

When an asset is put up for sale, one or more parties may compete for that asset. Because a lawyer cannot help one client obtain the asset without harming another client that also desires to obtain the same asset, a conflict of interest exists. Moreover, the lawyer is likely privy to bidding strategy or information that is confidential to both clients.

However, it's likely that no conflict exists where the law firm only represents one client bidding on the asset, even where another firm client is bidding on the asset, but is not represented by the firm in that effort. Because this is merely a commercial or economic adversity between two clients, it does not rise to the level of "differing interest" under Rules 1.0 and 1.7. For more information, see Comment 6 to Rule 1.7.

Finally, the opinion finds that conflicts of interest in multi-bidder scenarios are often waivable, and offers suggestions for specific protective measures firms might consider in multi-bidder situations.

If you or your firm represents bidders or purchasers, this opinion is worth a full read. The analysis is instructive, even if you don't practice in New York. Before relying entirely on this opinion, consult the rules and authorities of your jurisdiction to determine if there's variance with the New York authorities.

If you have questions about this or any other ethics or risk management topic, get in touch with us at [Attorneys Risk Management](#).



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