

Comment,
ATTORNEY-CLIENT SEXUAL
RELATIONSHIPS: A CALL FOR ALL
STATES TO ADOPT MODEL RULE 1.8(j)

I. Introduction

Before 2002, there was no model rule in the American Bar Association's Rules of Professional Conduct that banned attorney-client sexual relationships.¹ Before any model rule that limited such relationships, most states did not have any specific rule regarding these relations and relied on other rules of professional conduct when attorney-sexual relationships would go awry.

The American Bar Association's model rule on regulation of attorney-client sexual relations is Model Rule 1.8(j).² The rule states that a "lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced."³ More than half of the states have adopted the Model Rule, and others have versions of the Model Rule that ban attorney-client sex.⁴ Yet, there are still a handful of states that have no explicit rule to ban these sexual relationships, unless it has some other basis in other professional conduct rules.

The latest changes to a state regulation was in California in May 2018.⁵ The previous rule allowed attorneys to have sexual relationships with their clients; they were just not allowed to proposition the client for sexual relations before the representation.⁶ The new California law allows attorney-client sex if the relation-

¹ Frederick C. Moss & Patricia Chamblin, *Lover v. Lawyer: The Sex with Clients Debate in Texas*, 55 *ADVOC. (Texas)* 48 (Summer 2011).

² MODEL RULES OF PROF'L CONDUCT R. 1.8(j) (AM. BAR ASS'N 2018).

³ *Id.*

⁴ American Bar Association, CPR Policy Implementation Committee, *Variations of the ABA Model Rules of Professional Conduct, Rule 1.8(j)*, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_1_8j.authcheckdam.pdf (Sept. 29, 2017).

⁵ Bob Egelko, *New California Rule Bans Lawyers from Having Sex with Clients*, *SAN FRANCISCO GATE*, (May 10, 2018), <https://www.sfgate.com/news/article/New-California-rule-bans-lawyers-from-having-sex-12905698.php>.

⁶ Neil Wertlieb, *Best Behavior: In Addition to Many New Rules of Professional Conduct, the State Bar Has Proposed Various Changes to Existing*

ship predates the representation.⁷ This was met by an uproar from some California lawyers, who felt that the rule was an invasion of privacy.⁸ The California State Bar president, James Fox, explained the influence of attorneys, “lawyers have bargaining power over their clients. A client may feel subtle pressure, or perhaps not-so-subtle pressure, to acquiesce in sexual conduct.”⁹

One dramatic example of an attorney-client sexual relationship gone wrong occurred in *In re William Y. Frick*. Frick was a Missouri divorce lawyer who had an affair with his client, which progressed to that client and her teenaged son living with him.¹⁰ When he found out that this client had been engaging in romantic relations with other men, he began to send threatening letters to her, defaced her car, spray painted a vile word on her house, and poisoned her shrubs.¹¹ Security guards found him spray painting his client’s name on the side of a building.¹² Mr. Frick had an altercation with the guards, resulting in shots fired at one guard with the gun that Mr. Frick had with him.¹³ These illegal acts ended with Mr. Frick being charged with and found guilty of unlawful use of a weapon, a Class D felony in Missouri and was subsequently disbarred.¹⁴ *In re Frick* was an extreme example of an attorney-client sexual relationship gone wrong, but pop culture has depicted these relationships in the opposite way.

Television shows have portrayed attorney-client sexual relationships with rose-colored glasses. Charlotte York from “Sex and the City” sleeps with her divorce attorney and gets her “happily ever after.”¹⁵ “The Good Wife’s” Dianne Lockhart takes on a potential romantic partner as a client, even though it could create a potential conflict of interest and then later sleeps with her

Rules, Several of Which May Be Controversial or Even Disruptive, 40 L.A. LAW. 32 (Nov. 2017).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *In re Frick*, 694 S.W.2d 473 (1985).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Richard Komaiko, *Scandalous Divorce Lawyers Who Sleep with Their Clients*, HUFFINGTON POST (Apr. 1, 2012), https://www.huffpost.com/entry/scandalous-divorce-lawyer_b_1243205.

client.¹⁶ Most real-life scenarios are not as extreme as *In re Frick*, but more inherently coercive than pop culture portrayals.

This Comment will first examine professions other than law and their positions on relationships with clients. These professional stances will highlight the need for the legal field to catch up with other professions. Part III will focus on the problems and psychological phenomena of sexual relationships between attorneys and clients. Part IV examines the rules and rationales prior to the creation of Model Rule 1.8(j). Part V examines the current regulation of attorney-client sexual relationships. The Comment concludes with a survey of the current regulations for each state regarding attorney-client sexual relationships.

II. A Look at Other Professions

A. *What Is a Profession?*

Historically, professions have the goal of being recognized in the community and by the government for specified knowledge in a subject matter.¹⁷ Individuals gain expertise in a field that has a controlled flow into employment and sets standards that are developed by that field to be put into practice.¹⁸ Black's Law Dictionary defines a profession as a "vocation requiring advanced education and training; especially one of the three traditional learned professions—law, medicine, and the ministry."¹⁹ Case law in the United States has even established what constitutes a "learned profession."²⁰ In *Commonwealth v. Brown* the court defined a learned profession as one marked by "the need of unusual learning, the existence of confidential relations, and the adherence to a standard of ethics higher than that of the marketplace."²¹ Essentially, these professionals are distinguished from nonprofessionals by training and ethical responsibilities,

¹⁶ Jack Marshall, "The Good Wife" *Ethics: Sex with Clients Edition*, ETHICS ALARMS (Feb. 23, 2011), <https://ethicsalarms.com/2011/02/23/the-good-wife-ethics-sex-with-clients-edition/>.

¹⁷ *What Is a Profession?: The Historical View*, PROFESSIONAL STANDARDS COUNCIL, <https://www.psc.gov.au/what-is-a-profession/historical-view> (last visited Feb. 6, 2020).

¹⁸ *Id.*

¹⁹ *Profession*, BLACK'S LAW DICTIONARY 1226 (11th ed. 2019).

²⁰ *Commonwealth v. Brown*, 20 N.E. 2d 478, 481 (Mass. 1939).

²¹ *Id.*

and also by the circumstance that clients in a vulnerable state seek out their expertise.²²

B. *Professions with Policies Against Sexual Relations with Clients*

Numerous professions have banned sexual relations with their client. Medical professions abide by the Hippocratic oath.²³ The original oath states a promise to avoid “mischief, injustice, and sexual relations” during visits.²⁴ Dr. Lasagna in 1964 revised the oath to exclude the prohibition, but it is widely known that physicians do not engage in sexual relations with their patients.²⁵ The American Medical Association’s (AMA) Council on Ethical and Judicial Affairs has stated that any relationship in which a doctor has taken advantage and even risks taking advantage, of a patient is unethical due to the patient’s psychological or emotional vulnerability.²⁶ The report even advises that a physician consult with a colleague before entering into a relationship with a former patient.²⁷ The reasoning behind this is that there may be information that is uncovered that could be unfairly leveraged in a relationship.²⁸ Since private information is available to the physician, such as patient history, medical issues, and personal history, it is not a reciprocal relationship.²⁹ The other concern is that that the patient’s trust may be broken when a relationship commences, because it is not clear if the physician is working only for the patient’s welfare.³⁰

²² Malinda L. Seymore, *Attorney-Client Sex: A Feminist Critique of the Absence of Regulation*, 15 YALE L.J. L. & FEMINISM 175,177 (2003)

²³ Anthony E. Davis & Judith Grimaldi, *Sexual Confusion: Attorney-Client Sex and the Need for a Clear Ethical Rule*, 7 NOTRE DAME J.L ETHICS & PUB. POL’Y 57, 59 (1993).

²⁴ Robert H. Shmerling, *The Myth of the Hippocratic Oath*, HARVARD MEDICAL SCHOOL (Nov. 25, 2015), <https://www.health.harvard.edu/blog/the-myth-of-the-hippocratic-oath-201511258447>.

²⁵ Rachel Hajar, *The Physician’s Oath: Historical Perspectives*, U.S. NATIONAL LIBRARY OF MEDICINE (Oct.-Dec. 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5755201/>.

²⁶ Davis & Grimaldi, *supra* note 23, at 61.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

The American Psychological Association's Rule 10.08 places greater restrictions on psychologists from engaging in sexual relations with clients.³¹ The rule extends to former clients and patients, stating that the psychologist cannot have a sexual relationship with a former patient for at least two years after the therapeutic relationship has ended. This rule is in place because a relationship could hinder a therapist's objectivity, and ultimately hurt the patient.³² Chiropractors also have these bans in part because of the close physical contact that chiropractors have with their patients.³³ The Social Worker Code of Ethics also prohibits sexual relations with clients, due to the unique needs of their clients.³⁴ Rule 1.09(b) further states that sexual relationships should not commence with clients' relatives, or anyone who has a close, personal relationship with the client.³⁵ Rule 1.09(c) also states that social workers cannot have sexual relationships with former clients because there is potential harm to the former client, but states vary on this ban; one example is Iowa, where social workers can commence sexual relationships five years after the client relationship ended.³⁶ If a social worker does form a sexual relationship with a former patient, then the social worker has the burden of showing that the former client was not intentionally, or unintentionally coerced or exploited so they can keep their license.³⁷ The National Association of Social Workers has also banned social workers from providing clinical services to individuals with whom they had commenced a prior sexual relationship.³⁸

³¹ Margit Livingston, *When Libido Subverts Credo: Regulation of Attorney-Client Sexual Relations*, 62 *FORDHAM L. REV.* 5 (1993).

³² *Id.*

³³ *Professional Boundaries: Identification and Consequences of Sexual Misconduct*, NCMIC 3 (2012), <https://www.ncmic.com/webres/File/risk-management/BoundariesGuide.pdf>.

³⁴ *Rule 1.09(a) Code of Ethics of the National Association of Social Workers*, National Association of Social Workers, Massachusetts Chapter (2008), <https://www.naswma.org/page/71/Code-of-Ethics-of-the-National-Association-of-Social-Workers.htm>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

Massage therapists are also subject to a ban on sexual relationships with their clients. The National Certification Board for Therapeutic Massage and Bodywork's standards require that their massage therapists do not engage in such relationships with existing clients and refrain from them for six months after the massage therapist-client relationship terminates.³⁹ Most of these professions mirror the training that lawyers must have to study law, and have close contact with clients, that can be extremely emotional. The legal profession should follow suit.

II. Scope of the Issue

Most attorney-client sexual relationships are vastly underreported.⁴⁰ Clients may be unaware of how to report attorney misconduct or are not aware that they can even report their attorney.⁴¹ Clients may also be unaware that attorneys cannot start sexual relationships with them in their jurisdictions.⁴² Lawyer and client sexual relationships are inherently unequal and may breach other ethical boundaries.⁴³ Opponents of Rule 1.8(j) thought that a more vigorous enforcement of rules that already exist would suffice.⁴⁴ The rivals of 1.8(j) argued the rule would be too overbroad and intrude on the privacy of both clients and attorneys.⁴⁵ There was also a fear that disgruntled clients could use this rule as a tool to retaliate against their attorneys.⁴⁶

A. Attorney-Client Power Imbalance

Lawyers have an immense amount of power.⁴⁷ Attorneys can climb the ranks to hold power within the government and

³⁹ Ronda Muir, *Practical Practice Tips: Lawyers Lusting After Clients and Their Spouses*, LAW PEOPLE BLOG (Apr. 11, 2012), <https://www.lawpeopleblog.com/2012/04/practical-practice-tips-lawyers-lusting-after-clients-and-their-spouses/>.

⁴⁰ Seymore, *supra* note 22, at 182.

⁴¹ *Id.*

⁴² *Id.* at 183.

⁴³ *See supra* text at note 4, at 219.

⁴⁴ Livingston, *supra* note 31, at 37.

⁴⁵ Moss & Chamblin, *supra* note 1, at 49.

⁴⁶ *Id.* at 51.

⁴⁷ John M. O'Connell, *Keeping Sex Out of the Attorney-Client Relationship: A Proposed Rule*, 92 COLUM. L. REV. 887, 888 (1992).

within society.⁴⁸ In comparison to their clients, lawyers are dominant because the client depends on the attorney with the legal matter, and trusts the attorney to keep confidences.⁴⁹ Attorneys may have greater social status, knowledge, and education than their client, so the lawyer more often than not dominates the relationship.⁵⁰ Clients are at their most vulnerable when they first come in to the attorney, and some would go to lengths to keep representation due to the cost and desperation.⁵¹ The practice areas in law that more often experience the illicit attorney-client relationships are criminal and family law, where the clients are particularly vulnerable.⁵²

B. *Transference and the Attorney-Client Relationship*

Transference is the phenomenon in which an individual's feelings, expectations, and desires are projected to another individual, usually directed at "important" individuals.⁵³ This was first described by psychoanalyst Sigmund Freud, who asserted that it was important for therapists to recognize this phenomenon.⁵⁴ Essentially, during transference the patient turns into a "biological time machine," when the therapist might remind the patient of their past through verbal advice or physical action.⁵⁵ Once that nerve is struck, an "emotional time warp" will bring the past's emotional needs to the patient's present psychological needs.⁵⁶ Although transference can be useful in helping a client be more relaxed, it can also hinder the patient's progress.⁵⁷ Freud

⁴⁸ *Id.* at 889.

⁴⁹ *Id.* at 890.

⁵⁰ Moss & Chamblin, *supra* note 2, at 49.

⁵¹ *Id.* at 52.

⁵² Michael E. McCabe, Jr., *Attorney-Client Sex: A Bad Idea That's Also Unethical*, McCabe Law—IP Ethics (Mar. 6, 2019), <https://www.ipethicslaw.com/attorney-client-sex-a-bad-idea-thats-also-unethical/>.

⁵³ *Transference*, AMERICAN PSYCHOL. ASS'N, <https://dictionary.apa.org/transference> (last visited Feb. 6, 2020).

⁵⁴ Shira Vollmer, *Transference: Does the Past Influence the Present*, PSYCHOL. TODAY (Jan. 6, 2010), <https://www.psychologytoday.com/us/blog/learning-play/201001/transference>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Kristie Overstreet, *Transference v. Countertransference: What's the Big Deal?*, THERAPIST DEVELOPMENT CENTER (Dec. 18, 2018), <https://www.thera>

also highlighted that transference was not limited to psychoanalysts; it exists in all relationships.⁵⁸

In relation to lawyers and their clients, when transference occurs clients may see their attorney as their “savior.”⁵⁹ In this context, a client may find those feelings turning romantic.⁶⁰ A client could be susceptible to sexual advances by the attorney, and may even approach the attorney sexually as well.⁶¹

C. *Countertransference and the Attorney-Client Relationship*

Countertransference is another psychological phenomenon that lawyers should be wary of in practice. The American Psychological Association defines countertransference as “the therapist’s unconscious (and often conscious) reactions to the patients and to the patient’s transference.”⁶² These thoughts are based on the therapist’s own needs and are revealed through responses to the client’s behavior and thoughts that have been shared with the therapist.⁶³ This concept was brought to light due to publicized cases of therapists and vulnerable clients engaging in sexual relations with each other. The American Psychological Association later expressed its complete disapproval of the behavior.⁶⁴

There has been a “Therapeutic Jurisprudence” movement in the legal field, which puts the focus on lawyers recognizing how the law affects the mental health of their clients and participants of the system.⁶⁵ Lawyers must recognize that they are not just “observing” the case; they could be putting forth their own biases, and in some instances making parallels of the case to their own experiences.⁶⁶ Signs of countertransference may be grief, anger, sexual attractions, over-involvement in the case, and any

pistdevelopmentcenter.com/blog/transference-vs-countertransference-whats-the-big-deal/.

⁵⁸ Seymore, *supra* note 22, at 184.

⁵⁹ *Id.* at 185.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Countertransference*, AMERICAN PSYCHOL. ASS’N, <https://dictionary.apa.org/countertransference> (last visited Feb. 6, 2020).

⁶³ *Id.*

⁶⁴ Seymore, *supra* note 22, at 185.

⁶⁵ Marla Kahn, *Jurisprudential Countertransference*, 18 *TOURO L. REV.* 459, 460 (2015).

⁶⁶ *Id.* at 473.

other reaction that could be considered a greater response than appropriate to the situation.⁶⁷ In the context of the attorney-client sexual relationships, an attorney may be delighted that the client has so much admiration for them, and could misread that the feelings for the client are romantic.⁶⁸

III. Regulation of Attorney-Client Sexual Relations Before Rule 1.8(j)

Before the Professional Code of Conduct's Rule 1.8(j), the ABA Standing Committee on Ethics and Professional Responsibility found there were three risks to engaging in an attorney-client sexual relationship.⁶⁹ The relationship could be a conflict of interest, deprive the attorney of objective, independent judgment, and risk unrealistic expectations regarding the attorney-client privilege.⁷⁰

A. *Conflict of Interests*

A degree of detachment from the client is necessary for a "client-centered" model.⁷¹ An attorney-client sexual relationship paves the way to numerous conflicts of interest. A relationship of a sexual nature may affect the lawyer's objectivity and result in lackluster representation.⁷² When a sexual relationship is involved, an attorney might pursue the matter apathetically or perhaps too zealously, because of the lawyer's self-interest.⁷³ Take for example the case of Raymond Van Arnam, a divorce attorney who had feelings for his client.⁷⁴ Van Arnam pursued his client's interests too zealously, and urged two colleagues to break in and loot his client's estranged husband's home.⁷⁵ When the estranged husband came back home, the attorney charged the husband's

⁶⁷ *Id.* at 474.

⁶⁸ Seymore, *supra* note 22, at 185.

⁶⁹ Moss & Samblin, *supra* note 1, at 50.

⁷⁰ *Id.*

⁷¹ O'Connell, *supra* note 47 at 893.

⁷² Abed Awad, *Attorney-Client Sexual Relations*, 22 J. LEGAL PROF. 131, 173 (1997).

⁷³ *Id.* at 175.

⁷⁴ Komaiko, *supra* note 15.

⁷⁵ *Id.*

car in a rage, and subsequently was charged with fourth degree breaking and entering.⁷⁶

This involvement may also lead a lawyer to commit ethical, even if not criminal, violations, such as revealing confidential information, which could result in the lawyer becoming an adverse witness.⁷⁷ Information gleaned through the sexual relationship between the attorney and client is called into question; is it privileged or not?⁷⁸ The line becomes blurred in what capacity the client confides in the attorney; is it as a lover or as counsel?⁷⁹ The attorney-client privilege does not cover personal confidences in the context of a personal relationship with the attorney.⁸⁰ Even if consent or full disclosure to the client about the relationship were involved, it would still be problematic and would be a conflict of interest.⁸¹ A lawyer may lack objectivity and detachment when involved with a client.⁸² For instance a lawyer may decline a settlement offer to make the lawyer's services needed for a longer period of time.⁸³

B. *Fiduciary Duty*

Lawyers owe a fiduciary duty to their clients. Clients put their utmost trust and confidence in their attorneys, so attorneys must be candid and avoid deceiving their clients.⁸⁴ When attorneys and clients engage in sexual relations, the relationship is unequal, which exploits the attorney's fiduciary role.⁸⁵ When sexual relationships are involved, the most common breaches of fiduciary duties occur when lawyers put their own personal interests above the clients' interests, take advantage of a client's trust, and create conflicts of interest. In *Barbara A. v. John G.*, the lawyer brought suit against his client for the payment of legal fees, and

⁷⁶ *Id.*

⁷⁷ Awad, *supra* note 72, at 174.

⁷⁸ *Id.* at 175.

⁷⁹ *Id.*

⁸⁰ Seymore, *supra* note 22, at 180.

⁸¹ *Id.* at 175.

⁸² *Id.* at 180.

⁸³ *Id.*

⁸⁴ MODEL RULES OF PROF'L CONDUCT r. 2.1 (AM. BAR ASS'N 2018).

⁸⁵ William D. Slease & Sarah M. Armstrong, *The Closer You Get, the Harder You Fall: Practical and Ethical Challenges for Family Law Practitioners*, 31 J. AM. ACAD. MATRIM. LAW. 463, 469 (2019).

the client cross-claimed for damages that she suffered during an ectopic pregnancy due to their sexual relationship.⁸⁶ She alleged further that he had misrepresented his ability to cause pregnancy, and owed her a fiduciary duty.⁸⁷ The court refused to hold that a lawyer has fiduciary duty in all relations, and divided the relationship into “social” and “legal.”⁸⁸ The main issue with focusing on just the fiduciary duty is that it overlooks the potential psychological and emotional harm done to the clients.⁸⁹

C. *Misconduct*

Misconduct was another catch-all rule that was used before Rule 1.8(j). Rule 8.4(c) defines misconduct as “engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation.”⁹⁰ Rule 8.4’s Comment 2 provides that an attorney’s conduct that involves fraud or dishonesty would be grounds for misconduct because that conduct would adversely reflect on the attorney’s ability to practice law.⁹¹ “Moral turpitude,” such as adultery and other matters of personal morality, are not subject to a misconduct claim.⁹² Rule 8.4(d) also defines misconduct as to “engage in conduct that is prejudicial to the administration of justice.”⁹³ Rule 8.4(d)’s Comment 3 concludes that attorneys can commit misconduct if they sexually harass another individual.⁹⁴ Sexual harassment includes requesting sexual favors, unwelcome physical or verbal sexual conduct, and unwanted sexual advances.⁹⁵ Sexual relationships between attorneys and clients, before Model Rule 1.8(j), may not have been in either category, and not punishable via the rules unless the attorney had been engaging in fraud or dishonesty, or had sexually harassed the client.

⁸⁶ Davis & Grimaldi, *supra* note 23, at 64.

⁸⁷ *Id.* at 65.

⁸⁸ *Id.*

⁸⁹ Awad, *supra* note 72, at 177.

⁹⁰ MODEL RULES OF PROF’L CONDUCT r. 8.4 (AM. BAR ASS’N 2018).

⁹¹ MODEL RULES OF PROF’L CONDUCT r. 8.4 cmt. 2 (AM. BAR ASS’N 2018).

⁹² *Id.*

⁹³ MODEL RULES OF PROF’L CONDUCT r. 8.4(d) (AM. BAR ASS’N 2018).

⁹⁴ MODEL RULES OF PROF’L CONDUCT r. 8.4 cmt. 3 (AM. BAR ASS’N 2018).

⁹⁵ *Id.*

D. Reporting Lawyers

In the 1990's and the early 2000's, before Model Rule 1.8(j), there was also a concern that individuals did not know that they could report their lawyers, and they did not even know where they would be able to report them.⁹⁶ In a 1992 statewide survey 32% of attorneys admitted that they knew of at least one lawyer who had sexual relations with a client.⁹⁷ Seven percent of the respondents also admitted that they, themselves, had had a sexual relationship with a client.⁹⁸ A *National Law Journal* poll of the state bar associations discovered that only 1% or less of complaints involved sexual abuse.⁹⁹ This was a 1993 random survey that was given to only 1,500 attorneys nationwide, with scant studies since.¹⁰⁰

Today, there is much less concern that clients will not know where to turn if they have an ethical complaint against an attorney. This is due primarily to the increased availability of information via the internet. The ABA even has a resource list of state bars to contact for complaints against lawyers and judges.¹⁰¹

IV. Current Regulation of Attorney-Client Sexual Relationships

The ABA Model Rules provide commentary for Rule 1.8(j) that states “the relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence.”¹⁰² The comment explains that the relationship would always be unequal because of the lawyer's fiduciary role, and emotional involvement may affect the quality of representation.¹⁰³ Additionally, it can complicate attorney-client privilege, blurring the line of what is protected information because the

⁹⁶ Seymore, *supra* note 22 at 175.

⁹⁷ *Id.* at 181.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Moss & Chamblin, *supra* note 1, at 50.

¹⁰¹ American Bar Association, *Resources for the Public*, AMERICAN BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/ (last visited Mar. 3 2020).

¹⁰² MODEL RULES OF PROF'L CONDUCT R. 1.8(j) cmt. 17 (AM. BAR ASS'N 2018).

¹⁰³ *Id.*

lawyer is at times counsel and in other instances a lover.¹⁰⁴ Comment 18 makes a distinction for sexual relationships that predate the attorney-client relationship.¹⁰⁵ Those relationships that were started before the representation are allowed, but the attorney must weigh if the representation would be “materially limited by the relationship.”¹⁰⁶ Comment 19 also distinguishes the situation when a client is an individual versus an organization.¹⁰⁷ This rule prohibits attorneys from having a sexual relationship with an individual who works for the organization who “supervises, directs, or regularly consults with that lawyer concerning the organization’s legal matters.”¹⁰⁸ A majority of states have adopted the Model Rule, or have their own version. The following Fifty-State Survey addresses each state’s professional conduct rule.

¹⁰⁴ *Id.*

¹⁰⁵ MODEL RULES OF PROF’L CONDUCT R. 1.8(j) cmt. 18 (AM. BAR ASS’N 2018).

¹⁰⁶ *Id.*

¹⁰⁷ MODEL RULES OF PROF’L CONDUCT R. 1.8(j) cmt. 19 (AM. BAR ASS’N 2018).

¹⁰⁸ *Id.*

V. State Survey of Professional Conduct Rules on Attorney-Client Sexual Relations

State and Effective Date	ABA Model Rules of Professional Conduct Rule 1.8(j) “A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.” ¹⁰⁹
Alabama Effective: 2/19/09 ¹¹⁰	Rule 1.8(l) a lawyer shall not engage in sexual conduct with a client or representative of a client that exploits or adversely affects the interests of the client or the lawyer relationship including, but not limited to: 1. Requiring or demanding sexual relations with a client or a representative of a client incident to or as a condition of legal representation; 2. Continuing to represent a client if the lawyer’s sexual relations with the client or the representative of the client cause the lawyer to render incompetent representation
Alaska Effective: 4/15/09 ¹¹¹	Rule 1.8(j): A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced and the sexual relationship does not create a conflict under Rule 1.7(a)(2). For purposes of this rule, when the client is an organization, “client” means a constituent of the organization who supervises, directs, or regularly consults with that lawyer concerning the organization’s legal matters. See Rule 1.13(h) for the definition of “constituent.”
Arizona: Effective 12/1/03 ¹¹²	Adopted Model Rule.

¹⁰⁹ MODEL RULES OF PROF’L CONDUCT r. 1.8(j) (AM. BAR ASS’N 2018).

¹¹⁰ ALA. RULES OF PROF’L CONDUCT r. 1.8(l) (ALA. BAR ASS’N 2019).

¹¹¹ ALASKA RULES OF PROF’L CONDUCT r. 1.8(j) (ALASKA BAR ASS’N 2020).

¹¹² ARIZ. RULES OF PROF’L CONDUCT r. 1.8(j) (ARIZ. BAR ASS’N 2019).

Arkansas Effective 5/1/05 ¹¹³	Adopted Model Rule.
California: Effective: 11/1/18 ¹¹⁴	<p>1.8.10 Sexual Relations with Current Client</p> <p>(a) A lawyer shall not engage in sexual relations with a current client who is not the lawyer’s spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced.</p> <p>(b) For purposes of this rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person* for the purpose of sexual arousal, gratification, or abuse.</p> <p>(c) If a person* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer under this rule until the State Bar has attempted to obtain the client’s statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.</p> <p>*Terminology Rule 1.0.01 (g-1): “Person” has the meaning stated in Evidence Code section 175.¹¹⁵</p>
Colorado Effective 1/1/08 ¹¹⁶	Adopted Model Rule.
Connecticut Effective 1/1/07 ¹¹⁷	Adopted Model Rule.
Delaware Effective 7/1/03 ¹¹⁸	Adopted Model Rule.

113 ARK. RULES OF PROF’L CONDUCT r. 1.8(j) (ARK. BAR ASS’N 2019).
114 CAL. RULES OF PROF’L CONDUCT r. 1.8.10 (CAL. BAR ASS’N 2018).
115 CAL. RULES OF PROF’L CONDUCT r. 1.0.01(g-1) (CAL. BAR ASS’N 2018).
116 COLO. RULES OF PROF’L CONDUCT r. 1.8(j) (COLO. BAR ASS’N 2018).
117 CONN. RULES OF PROF’L CONDUCT r. 1.8(j) (CONN. BAR ASS’N 2019).
118 DEL. LAWYERS RULES OF PROF’L CONDUCT r. 1.8(j) (DEL. BAR ASS’N 2019).

<p>District of Columbia Effective 2/1/07¹¹⁹</p>	<p>Did not add Model Rule.</p> <p>Rule 1.8 Comment: [21] Concerns about personal relationships, including sexual relationships, between lawyers and clients are addressed in Comments [37]-[39] to Rule 1.7.</p> <p>Rule 1.7 Sexual Relations Between Lawyer and Client</p> <p>[37] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. Because of this fiduciary duty to clients, combining a professional relationship with any intimate personal relationship may raise concerns about conflict of interest, impairment of the judgment of both lawyer and client, and preservation of attorney-client privilege. These concerns may be particularly acute when a lawyer has a sexual relationship with a client. Such a relationship may create a conflict of interest under Rule 1.7(b)(4) or violate other disciplinary rules, and it generally is imprudent even in the absence of an actual violation of these Rules.</p> <p>[38] Especially when the client is an individual, the client's dependence on the lawyer's knowledge of the law is likely to make the relationship between lawyer and client unequal. A sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role and thereby violate the lawyer's basic obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant risk that the lawyer's emotional involvement will impair the lawyer's independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict the extent to which client confidences will be protected by the attorney-client privilege, because client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. The client's own emotional involvement may make it impossible for the client to give informed</p>
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¹¹⁹ D.C. RULES OF PROF'L CONDUCT r. 1.8 cmt. 21 (D.C. BAR ASS'N 2019); D.C. RULES OF PROF'L CONDUCT r. 1.7, cmts. 37-39. (D.C. BAR ASS'N 2019).

	<p>consent to these risks.</p> <p>[39] Sexual relationships with the representative of an organization client may not present the same questions of inherent inequality as the relationship with an individual client. Nonetheless, impairment of the lawyer's independent professional judgment and protection of the attorney-client privilege are still of concern, particularly if outside counsel has a sexual relationship with a representative of the organization who supervises, directs, or regularly consults with an outside lawyer concerning the organization's legal matters. An in-house employee in an intimate personal relationship with outside counsel may not be able to assess and waive any conflict of interest for the organization because of the employee's personal involvement, and another representative of the organization may be required to determine whether to give informed consent to a waiver. The lawyer should consider not only the disciplinary rules but also the organization's personnel policies regarding sexual relationships (for example, prohibiting such relationships between supervisors and subordinates).</p>
<p>Florida Effective 5/22/06¹²⁰</p>	<p>Rule 4-8.4:</p> <p>(i) engage in sexual conduct with a client or a representative of a client that exploits or adversely affects the interests of the client or the lawyer-client relationship.</p> <p>Comment:</p> <p>If the sexual conduct commenced after the lawyer-client relationship was formed it shall be presumed that the sexual conduct exploits or adversely affects the interests of the client or the lawyer-client relationship. A lawyer may rebut this presumption by proving by a preponderance of the evidence that the sexual conduct did not exploit or adversely affect the interests of the client or the lawyer-client relationship.</p> <p>The prohibition and presumption stated in this rule</p>

¹²⁰ FLA. RULES OF PROF'L CONDUCT I. 4-8.4(i) (FLA. BAR ASS'N 2019); see also I. 4-8.4 cmt.

	do not apply to a lawyer in the same firm as another lawyer representing the client if the lawyer involved in the sexual conduct does not personally provide legal services to the client and is screened from access to the file concerning the legal representation.
Idaho Effective 7/1/04 ¹²¹	Adopted Model Rule.
Illinois Effective 1/1/2010 ¹²²	Adopted Model Rule.
Indiana Effective 1/1/05 ¹²³	Adopted Model Rule.
Iowa Effective 7/1/05 ¹²⁴	Adopted Model Rule and added: Rule 32:1.8(j): A lawyer shall not have sexual relations with a client, or a representative of a client, unless the person is the spouse of the lawyer or the sexual relationship predates the initiation of the client-lawyer relationship. Even in these provisionally exempt relationships, the lawyer should strictly scrutinize the lawyer's behavior for any conflicts of interest to determine if any harm may result to the client or to the representation. If there is any reasonable possibility that the legal representation of the client may be impaired, or the client harmed by the continuation of the sexual relationship, the lawyer should immediately withdraw from the legal representation.
Kansas Effective 7/1/07 ¹²⁵	Adopted Model Rule
Kentucky Effective 3/1/04 ¹²⁶	Adopted Model Rule.

121 IDAHO RULES OF PROF'L CONDUCT r. 1.8(j) (IDAHO BAR ASS'N 2019).

122 ILL. RULES OF PROF'L CONDUCT r. 1.8(j) (ILL. BAR ASS'N 2020).

123 IND. RULES OF PROF'L CONDUCT r. 1.8(j) (IND. BAR ASS'N 2019).

124 IOWA RULES OF PROF'L CONDUCT r. 32:1.8(j) (IOWA BAR ASS'N 2019).

125 KAN. RULES OF PROF'L CONDUCT r. 1.8(j) (KAN. BAR ASS'N 2019).

126 KY. RULES OF PROF'L CONDUCT r. 1.8(j) (KY. BAR ASS'N 2019).

<p>Louisiana Effective 3/1/04¹²⁷</p>	<p>Did not add Model Rule.</p> <p>Comment:</p> <p>Paragraph (j): Sex with Clients</p> <p>Paragraph (j) (reserved) differs from the corresponding Model Rule addressing sex with clients. In 2002, the ABA adopted this per se rule following the lead of a number of jurisdictions that have adopted Rules explicitly regulating client-lawyer sexual conduct. Although recognizing that most egregious behavior of lawyers can be addressed through other Rules, the ABA believed that such Rules may not be sufficient. Given the number of complaints of lawyer sexual misconduct that have been filed, the ABA believed that having a specific Rule has the advantage not only of alerting lawyers more effectively to the dangers of sexual relationships with clients, but also of alerting clients that the lawyer may have violated ethical obligations in engaging in such conduct. Furthermore, the ABA adopted a complete, rather than a partial, ban on client-lawyer relationships, except for those pre-dating the formation of the client-lawyer relationship. The ABA believed that partial bans—such as those prohibiting relationships when they involve coercion or incompetence—did not effectively address the problem of conflicts of interest, particularly the difficulty of obtaining an adequately informed consent from the client. <i>See</i> ABA Ethics 2000 Revision Notes to Rule 1.8 (2002).</p> <p>In 2004, the Louisiana Supreme Court, on recommendation of the Ethics 2000 Committee of the Louisiana State Bar Association, declined to adopt paragraph (j). By a 5-5 vote, the Committee recommended no change to the LSBA rules, and thus, did not recommend the adoption of ABA Model Rule 1.8(j).</p> <p>No member of the LSBA House of Delegates moved the adoption of ABA Model Rule 1.8(j). Thereafter, the LSBA House of Delegates, without</p>
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127 LA. RULES OF PROF'L CONDUCT 1.8(j) (LA. BAR ASS'N 2018).

	further debate, concurred with the Committee's proposal.
Maine Effective 11/1/18 ¹²⁸	Adopted Model Rule.
Maryland Effective 7/1/05 ¹²⁹	Did not add Model Rule.
Massachusetts Effective 12/01/17 ¹³⁰	Did not add Model Rule.
Michigan (as proposed July 2004) ¹³¹	Did not add Model Rule. After careful study, the Supreme Court declined in 1998 to adopt a proposal to amend Rule 1.8 to limit sexual relationships between lawyers and clients. The Michigan Rules of Professional Conduct adequately prohibit representation that lacks competence or diligence, or that is shadowed by a conflict of interest. With regard to sexual behavior, the Michigan Court Rules provide that a lawyer may be disciplined for "conduct that is contrary to justice, ethics, honesty, or good morals." MCR 9.104(3). Further, the Legislature has enacted criminal penalties for certain types of sexual misconduct. In this regard, it should be emphasized that a lawyer bears a fiduciary responsibility toward the client. A lawyer who has a conflict of interest, whose actions interfere with effective representation, who takes advantage of a client's vulnerability, or whose behavior is immoral risks severe sanctions under the existing Michigan Court Rules and Michigan Rules of Professional Conduct.
Minnesota Effective: 10/1/05 ¹³²	Adopted Model Rule and adds: For purposes of this paragraph: (1) "sexual relations" means sexual intercourse or any other intentional touching of the intimate parts

128 ME. RULES OF PROF'L CONDUCT r. 1.8(j) (ME. BAR ASS'N 2019).

129 MD. RULES OF PROF'L CONDUCT (MD. BAR ASS'N 2019).

130 MASS. RULES OF PROF'L CONDUCT (MASS. BAR ASS'N 2019).

131 MICH. RULES OF PROF'L CONDUCT (MICH. BAR ASS'N 2019).

132 MINN. RULES OF PROF'L CONDUCT r. 1.8(j) (MINN. BAR ASS'N 2019).

	<p>of a person or causing the person to touch the intimate parts of the lawyer;</p> <p>(2) if the client is an organization, any individual who oversees the representation and gives instructions to the lawyer on behalf of the organization shall be deemed to be the client; in-house attorneys while representing governmental or corporate entities are governed by Rule 1.7 rather than by this rule with respect to sexual relations with other employees of the entity they represent;</p> <p>(3) this paragraph does not prohibit a lawyer from engaging in sexual relations with a client of the lawyer's firm provided that the lawyer has no involvement in the performance of the legal work for the client;</p> <p>(4) if a party other than the client alleges violation of this paragraph, and the complaint is not summarily dismissed, the Director of the Office of Lawyers Professional Responsibility, in determining whether to investigate the allegation and whether to charge any violation based on the allegations, shall consider the client's statement regarding whether the client would be unduly burdened by the investigation or charge.</p>
Mississippi Effective 11/3/05 ¹³³	Did not add Model Rule.
Missouri Effective 7/01/07 ¹³⁴	Adopted Model Rule.
Montana Effective 4/1/04 ¹³⁵	Adopted Model Rule.
Nebraska Effective 9/1/05 ¹³⁶	Adopted Model Rule.

¹³³ MISS. RULES OF PROF'L CONDUCT (MISS. BAR ASS'N 2020).

¹³⁴ MO. RULES OF PROF'L CONDUCT r. 4-1.8(j) (MO. BAR ASS'N 2019).

¹³⁵ MONT. RULES OF PROF'L CONDUCT r. 1.8(j) (MONT. BAR ASS'N 2020).

¹³⁶ NEB. CODE OF PROF'L CONDUCT r. 3-501.8(j) (NEB. BAR ASS'N 2019).

Nevada Effective 9/1/05 ¹³⁷	Adopted Model Rule , adds “this paragraph does not apply when the client is an organization.”
New Hampshire Effective 1/1/08 ¹³⁸	Adopted Model Rule.
New Jersey Effective 1/1/04: ¹³⁹	Did not add Model Rule.
New Mexico ¹⁴⁰	Did not add Model Rule
New York Effective 4/1/09 ¹⁴¹	Rule 1.8(j) (1): A lawyer shall not: (i) as a condition of entering into or continuing any professional representation by the lawyer or the lawyer’s firm, require or demand sexual relations with any person; (ii) employ coercion, intimidation or undue influence in entering into sexual relations incident to any professional representation by the lawyer or the lawyer’s firm; or (iii) in domestic relations matters, enter into sexual relations with a client during the course of the lawyer’s representation of the client. (2) Rule 1.8(j)(1) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the client-lawyer relationship
North Carolina Effective 3/1/03 ¹⁴²	Rule 1.19 Sexual Relations with Clients Prohibited (a) A lawyer shall not have sexual relations with a current client of the lawyer. (b) Paragraph (a) shall not apply if a consensual sexual relationship existed between the lawyer and the client before the legal representation commenced.

137 NEV. RULES OF PROF’L CONDUCT r. 1.8(j) (NEV. BAR ASS’N 2020).

138 N.H. RULES OF PROF’L CONDUCT r. 1.8(j) (N.H. BAR ASS’N 2019).

139 N.J. RULES OF PROF’L CONDUCT (N.J. BAR ASS’N 2019).

140 N.M. RULES OF PROF’L CONDUCT (N.M. BAR ASS’N 2019).

141 N.Y. RULES OF PROF’L CONDUCT r. 1.8(j) (N.Y. BAR ASS’N 2019).

142 N.C. RULES OF PROF’L CONDUCT r. 1.19 (N.C. BAR ASS’N 2019).

	<p>(c) A lawyer shall not require or demand sexual relations with a client incident to or as a condition of any professional representation.</p> <p>(d) For purposes of this rule, “sexual relations” means: (1) Sexual intercourse; or (2) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party.</p> <p>(e) For purposes of this rule, “lawyer” means any lawyer who assists in the representation of the client but does not include other lawyers in a firm who provide no such assistance.</p>
<p>North Dakota Effective 8/1/06¹⁴³</p>	<p>Adopted Model Rule</p>
<p>Ohio Effective 2/1/07¹⁴⁴</p>	<p>Replaces “shall not have sexual relations” with “shall not solicit or engage in sexual activity.”</p>
<p>Oklahoma Effective 2/1/07¹⁴⁵</p>	<p>Same as Model Rule.</p> <p>Makes text after “unless” (1) and adds “and (2) the relationship does not result in a violation of Rule 1.7(a)(2) to end.</p> <p>Client-Lawyer Sexual Relationships Comments: [17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer’s fiduciary role, in violation of the lawyer’s basic ethical obligation not to use the trust of the client to the client’s disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer’s emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line</p>

¹⁴³ N.D. RULES OF PROF’L CONDUCT r. 1.8(J) (N.D. BAR ASS’N 2019).

¹⁴⁴ OHIO RULES OF PROF’L CONDUCT r. 1.8(j) (OHIO BAR ASS’N 2019).

¹⁴⁵ OKLA. RULES OF PROF’L CONDUCT r. 1.8(j) (OKLA. BAR ASS’N 2019).

	<p>between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.</p> <p>[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).</p> <p>[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.</p>
<p>Oregon Effective 12/1/06¹⁴⁶</p>	<p>1.8(j) A lawyer shall not have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them before the client-lawyer relationship commenced; or have sexual relations with a representative of a current client of the lawyer if the sexual relations would, or would likely, damage or prejudice the client in the representation. For purposes of this rule:</p> <p>(1) "sexual relations" means sexual intercourse or</p>

¹⁴⁶ OR. RULES OF PROF'L CONDUCT r. 1.8(j) (OR. BAR ASS'N 2020).

	<p>any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party; and</p> <p>(2) “lawyer” means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.</p>
<p>Pennsylvania Effective 7/1/06¹⁴⁷</p>	<p>Adopted Model Rule.</p>
<p>Rhode Island Effective 4/15/07¹⁴⁸</p>	<p>Did not adopt Model Rule.</p>
<p>South Carolina Effective 10/1/05¹⁴⁹</p>	<p>1.8(m): A lawyer shall not have sexual relations with a client when the client is in a vulnerable condition or is otherwise subject to the control or undue influence of the lawyer, when such relations could have a harmful or prejudicial effect upon the interests of the client, or when sexual relations might adversely affect the lawyer’s representation of the client.</p>
<p>South Dakota Effective 1/1/04¹⁵⁰</p>	<p>Adopted Model Rule</p>
<p>Tennessee Effective 1/1/11¹⁵¹</p>	<p>[Reserved]</p> <p>Sexual Relations Between Lawyer and Client</p> <p>[12] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. Because of this fiduciary duty to clients, combining a professional relationship with any intimate personal relationship may raise concerns about conflict of interest, impairment of the judgment of both lawyer and client, and preservation of attorney-client privilege. These concerns may be particularly acute when a lawyer</p>

¹⁴⁷ PA. RULES OF PROF’L CONDUCT r. 1.8(j) (PA. BAR ASS’N 2019).

¹⁴⁸ R.I. RULES OF PROF’L CONDUCT (R.I. BAR ASS’N 2019).

¹⁴⁹ S.C. RULES OF PROF’L CONDUCT r. 1.8(m) (S.C. BAR ASS’N 2019).

¹⁵⁰ S.D. RULES OF PROF’L CONDUCT r. 1.8(j) (S.D. BAR ASS’N 2019).

¹⁵¹ TENN. RULES OF PROF’L CONDUCT cmt. 12-12b (TENN. BAR ASS’N 2019).

has a sexual relationship with a client. Such a relationship may create a conflict of interest under paragraph (a)(2) or violate other disciplinary rules, and it generally is imprudent even in the absence of an actual violation of these Rules.

[12a] Especially when the client is an individual, the client's dependence on the lawyer's knowledge of the law is likely to make the relationship between the lawyer and client unequal. A sexual relationship between lawyer — 40 — Tennessee Rules of Professional Conduct Rule 1.7 and client can involve unfair exploitation of the lawyer's fiduciary role and thereby violate the lawyer's basic obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant risk that the lawyer's emotional involvement will impair the lawyer's independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict the extent to which communications will be protected by the attorney-client privilege, because communications are protected by privilege only when they are imparted in the context of the client-lawyer relationship. The client's own emotional involvement may make it impossible for the client to give informed consent to these risks.

[12b] Sexual relationships with the representative of an organizational client may not present the same questions of inherent inequality as the relationship with an individual client. Nonetheless, impairment of the lawyer's independent professional judgment and protection of the attorney-client privilege are still of concern, particularly if outside counsel has a sexual relationship with a representative of the organization who supervises, directs, or regularly consults with an outside lawyer concerning the organization's legal matters. An in-house employee in an intimate personal relationship with outside counsel may not be able to assess and waive any conflict of interest for the organization because of the employee's personal involvement, and another representative of the organization may be required to determine whether to give informed consent to a waiver.

	The lawyer should consider not only the disciplinary rules but also the organization's personnel policies regarding sexual relationships (for example, prohibiting such relationships between supervisors and subordinates).
Utah Effective 11/1/05 ¹⁵²	A lawyer shall not engage in sexual relations with a client that exploits the client-lawyer relationship. For the purposes of this Rule: (j)(1) "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification or abuse; and (j)(2) except for a spousal relationship or a sexual relationship that existed at the commencement of the client-lawyer relationship, sexual relations between the lawyer and the client shall be presumed to be exploitative. The presumption is rebuttable.
Vermont Effective 9/1/09 ¹⁵³	1.8 Comment: [17] is the same as ABA Model Rule but replaces the last sentence with "For all of these reasons, lawyers are cautioned that sexual relations with a current client could give rise to claims of incompetence under Rule 1.1, of lack of diligence under Rule 1.3, of a conflict with the lawyer's personal interests under Rule 1.7(a)(2), of using client information to the client's disadvantage under Rule 1.8(b), of conduct involving dishonesty or the like under Rule 8.4(c), or of conduct prejudicial to the administration of justice under Rule 8.4(d)." Does not adopt Model Rule Comments [18] and [19].
Virginia Effective 1/1/04 ¹⁵⁴	Does not adopt Model Rule.
Washington Effective 9/1/06 ¹⁵⁵	(1) Adds "current" before "client." Adds: (2) have sexual relations with a representative of a current client if the sexual relations would, or would likely,

152 UTAH RULES OF PROF'L CONDUCT r. 1.8(j) (UTAH BAR ASS'N 2020).

153 VT. RULES OF PROF'L CONDUCT r. 1.8 COMM. (VT. BAR ASS'N 2019).

154 VA. RULES OF PROF'L CONDUCT (VA. BAR ASS'N 2019).

155 WASH. RULES OF PROF'L CONDUCT r. 1.8(j) (WASH. BAR ASS'N 2019).

	damage or prejudice the client in the representation. (3) For purposes of Rule 1.8(j), “lawyer” means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance
West Virginia Effective 1/1/15 ¹⁵⁶	Adopts Model Rule.
Wisconsin Effective 7/1/07 ¹⁵⁷	Adds “current” before “client.” Adds: (1) In this paragraph, “sexual relations” means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer. (2) When the client is an organization, a lawyer for the organization (whether inside counsel or outside counsel) shall not have sexual relations with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization’s legal matters.
Wyoming Effective 7/1/06 ¹⁵⁸	Similar to Model Rule but adds “current” before “client” in first clause, and adds to end: “or unless the lawyer and client are married. A lawyer shall not have sexual relations with the spouse of a current client.”

VI. Conclusion

“The love of liberty is the love of others; the love of power is the love of ourselves.”

—William Hazlitt, *Political Essays*¹⁵⁹

Lawyers and clients are inherently unequal in relative status within the attorney-client relationship. Other professions, such as medicine and psychiatry, recognize that a sexual relationship would hinder a patient’s progress and exploit the professional re-

¹⁵⁶ W. VA. RULES OF PROF’L CONDUCT I. 1.8(j) (W. VA. BAR ASS’N 2019).

¹⁵⁷ WIS. RULES OF PROF’L CONDUCT I. 1.8(j) (WIS. BAR ASS’N 2020).

¹⁵⁸ WYO. RULES OF PROF’L CONDUCT I. 1.8(j) (WYO. BAR ASS’N 2019).

¹⁵⁹ Joyce Peters, *Bar Counsel: Love Your Work: Keep Cupid Away from You and Your Client*, WASH. LAW., Feb. 2003 (citing William Hazlitt, *Political Essays*, TIMES (1819)), <https://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/february-2003-bar-counsel.cfm>.

lationship. The psychological phenomena of transference and countertransference are extremely common in helping professions, and lawyers should be cognizant of these occurrences especially with vulnerable clients in criminal and family law matters. Clients may think of attorneys as “saviors,” and attorneys may bask in that attention and mistake it for sexual attraction. States that have not adopted the model, and rely on other professional rules, are not sufficient to protect a client’s best interest or keep up with the integrity of the profession. While other professions have complete bans, and most states have professional rules for attorneys that ban these sexual relationships, there are still ten states that have not banned attorney-client sexual relations. Adoption of Model Rule 1.8(j) for all fifty states should be mandatory if the legal field wants to be considered “client-oriented” and up to par with other professions

Hannah Thompson Stilley.

