

February 26, 2026

Issue Number: 2026-6. When Duties Collide: How Tax Practitioners Can Spot and Solve Conflicts of Interest

In broad terms, a conflict of interest is a “real or seeming incompatibility between two interests that one possesses or is obligated to serve, esp. when one of those interests might benefit the person to whom both are entrusted.” Black’s Law Dictionary, Conflict of Interest (12th ed. 2024). Conflicts of interest can arise in diverse professions and contexts – for example, in the practice of law, certified public accounting, and medicine; in power-of-attorney relationships (impairing the appointed agent’s duty to act with care or diligence on behalf of the principal); and among public officials, including legislators and judges. And as with many other fields, conflicts of interest are often encountered in the tax profession and, in particular, during practice before the IRS.

As the IRS business unit responsible for administration and enforcement of the *Regulations Governing Practice before the Internal Revenue Service* in [Circular 230](#), the Office of Professional Responsibility (OPR) is taking the opportunity to remind tax practitioners of the regulations’ conflict-of-interest rules. All practitioners, regardless of the size or scope of their practice, need to be aware of conflicts of interest that can occur during the representation of taxpayers.

Conflicts of interest are the subject of Circular 230 section 10.29, which has three main pieces. This article starts with what a conflict of interest means in Circular 230 and then moves on to practitioners’ options for dealing with them.

■ **Definition**

Paragraph (a) of section 10.29 defines a conflict of interest as when:

- A practitioner’s “representation of one client before the IRS will be directly adverse to another client” whom the practitioner represents ((a)(1)); or
- A “significant risk” exists “that the practitioner’s representation of one individual or more clients will be materially limited by the practitioner’s responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.” ((a)(2))

NOTE: paragraphs (b) and (c) of section 10.29, discussed below, provide, one, a waiver-and-consent based exception (allowing for representation despite a conflict of interest) and, two, the required method of waiver and consent.

As to the definition’s key phrases of “directly adverse,” “significant risk,” and “materially limited,” the circular’s definition is far from being distinctly unique; rather, it is the prevailing one applicable to attorneys nationwide. When the Treasury Department and the IRS added what are

substantively the current conflict-of-interest provisions to Circular 230 in 2002 (tweaked in 2004 and 2007), the drafters intentionally modeled them on American Bar Association (ABA) Model Rule of Professional Responsibility 1.7, “Conflict of Interest: Current Clients.” See [67 Fed. Reg. 4876, 48764 \(Jul. 26, 2002\)](#) (“The final regulations have been modified from the proposed regulations to conform more closely with the approach of the recently revised Model Rule 1.7 . . .”). Treasury and IRS in large part adopted the ABA rule almost verbatim; for example, the only difference in their respective conflict definitions is the use of “lawyer” and “practitioner.” That background furnishes a useful insight for interpreting and applying section 10.29. Such that practitioners, IRS personnel reporting suspected violations of the section to our office, and the OPR, have available to them as sources of guidance, the ABA comments and annotations to Rule 1.7 and to other extrinsic authorities and aides (like case law and formal ethics opinions).¹

■ Common Scenarios

The following are situations in which conflicts often arise:

- Related taxpayers: Representing a married couple during an IRS examination where one spouse seeks innocent spouse relief, under IRC 6015.
- Entities and owners: Representing a corporation and its shareholders, or a partnership and its partners.
- Personal interests: Undertaking the representation of a taxpayer whose prosperity or financial interests are (or seem to be) counter to the practitioner’s interests.

¹ Some examples:

Directly adverse. | “[A]n ‘adverse’ interest is one that is hostile, opposed, antagonistic, detrimental, or unfavorable to another’s interests.” AMERICAN JURISPRUDENCE 2D, Vol. 7, Attorneys at Law, section (§) 182, *General prohibition of representation of conflicting interests* (Feb. 2026 update).

Significant risk. | “When a lawyer learns confidential information from [consulting with] another lawyer, the lawyer’s knowledge of the information creates a significant risk of materially limiting the lawyer’s representation of his own present or future client” if the information subject to confidentiality may be helpful to the client. *Liebnow by & through Liebnow v. Boston Enters. Inc.*, 296 P.3d 108, 115 (2013). See also *In re Marriage of Hipes & Lozano*, 2025 IL App (1st) 240601, ¶ 55, 272 N.E.3d 840, 851–52 (Ill. App. Ct. 2025) (“Disqualification pursuant to [Illinois Rules of Professional Conduct] Rule 1.7(a)(2) [on current client conflicts of interest] requires a significant risk that an attorney’s ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited due to the attorney’s own interests.”); Restatement (Third) of the Law Governing Lawyers § 121, *The Basic Prohibition of Conflicts of Interest* (2000) (discussing the equivalent term of “substantial risk”: “In many cases the material adverse effect on the representation will be immediate, actual, and apparent. Other situations, however, might present a risk that is only potential or contingent. In this context, ‘substantial risk’ means that in the circumstances the risk is significant and plausible, even if it is not certain or even probable that it will occur. The standard requires more than a mere possibility of adverse effect.”).

Materially limited. | “Arguing a position favorable to one client, at the expense of another client, constitutes a *detrimental position* with respect to the . . . [latter] client[,]” resulting in representation of a client “materially limited by . . . responsibility to” the other client. *In re Disciplinary Proc. Against Widule*, 261 Wis. 2d 45, 66, 660 N.W.2d 686, 696 (2003) (emphasis added).

- Suppose the taxpayer is the small business rival, in a tightly competitive local market, of another company at which the practitioner is an occasional, part-time employee. Any sizeable reduction in the taxpayer's working capital, due to increased tax liabilities or otherwise, tends to indirectly benefit the practitioner's employer. The practitioner therefore may experience divided loyalties, even if only mild ones, that could impair the representation. Whether there is a substantial risk of the representation being materially limited is unclear, but the practitioner needs to at least recognize the risk and consider it.
- The scenario of conflict with financial interests includes any imputed to the practitioner, usually those of a spouse.
- Competing positions before the IRS / Professional vs. personal: Preparing and filing a client's federal tax return that reports questionable tax benefits and afterwards defending them.
 - A fact pattern resembling ones familiar to the OPR would be where the practitioner advised the taxpayer that they were eligible to claim certain deductions from individual income tax. The practitioner then later represents the taxpayer when the deductions are selected items in an IRS examination of the return. The examiner disallows the deductions, asserts an IRC 6662 accuracy related penalty against the taxpayer, and sends a return preparer referral on the practitioner to the responsible IRS group for consideration of a preparer examination. At that point, the practitioner's representation of the taxpayer may become materially limited by the practitioner's own interest in deflecting liability for any penalties.
 - The predicament worsens if the taxpayer has a viable reasonable cause defense to the penalty based on advice from a professional.²

■ Prevention and Elimination Remedies

To avoid conflicts of interest, practitioners should proactively identify potential conflicts before they arise. When a prospective client (or one already served) approaches a practitioner about representation in a matter before the IRS, the practitioner should assess whether going forward with the representation is likely to conflict with their existing commitments. Particularly those owed to other clients. As to clients under active representation, the concern to be considered is that by agreeing to represent the person, the practitioner would be advocating and acting concurrently for clients whose apparent interests are directly adverse to each other. As to former clients, the analysis is to what extent representation of the prospective client can be expected to breach one or more duties owed to a previous client. Duties such as maintaining confidentiality of information or adhering to the prohibition against using it to the past client's disadvantage. If a conflict or the prospect of one is identified, the practitioner may need to decline the new representation. Likewise, if the representation poses a significant risk of materially limiting the practitioner's ability to continue to represent another client zealously and effectively, it is advisable to decline the new representation, unless the practitioner can find a successful way to resolve the conflict (as discussed below).

² See IRC 6664(c)(1) and its regulations.

A method to deter conflicts, short of fully declining a new client opportunity, is to limit at the outset the scope of representation,³ so that the practitioner only represents the client in matters that do not overlap with the matters handled for other clients.

Options to *manage* conflicts (assuming a practitioner does not choose to decline the representation that would be the cause) include withdrawing from the representation of an existing client who would be the other party to the conflict. A practitioner can withdraw provided it is appropriate, timely, and would not adversely impact the client. Keep in mind that withdrawing from representation in the legal context may require court approval.⁴

Conflicts arising from the practitioner's responsibilities to third parties (beyond just former clients) can occur in various ways. For example, as a fiduciary, including a trustee of a trust or an appointed administrator or representative of the estate of a decedent who died intestate, or as an uncompensated officer or board member of a tax exempt charitable organization or private foundation. Situations like these are susceptible to temporarily suspending or reassigning the responsibilities of the role. When the practitioner who would be conflicted out of the representation works in a firm of other practitioners, another possibility is for a different member of the firm to

³ It is a best practice in general, as both a conflict preventative measure and otherwise, to define or establish the scope of representation, which should be done first orally with the client and then memorialized in writing, typically with an engagement letter or similar document. The scope of the representation can be revisited and modified as needed as the representation progresses. For conflicts of interest, the engagement letter or retainer agreement can describe how any predicable or unforeseen conflicts will be handled.

⁴ See, generally, Legal Clarity, Administrative and Government Law, "Can an Attorney Withdraw From a Case?" (published Jun. 24, 2025):

The Withdrawal Process

When a client does not agree to the withdrawal, the attorney must follow a formal court procedure by filing a "Motion to Withdraw as Counsel" with the court. This motion formally requests removal and outlines the reasons without revealing confidential client information. The motion must be served to both the client and the opposing party.

<https://legalclarity.org/can-an-attorney-withdraw-from-a-case/>

See, for example, Pennsylvania's procedural rule for withdrawing from civil litigation, Pa. R. Civ. P. No. 1012, *Entry of Appearance. Withdrawal of Appearance. Notice*, stating in part:

(b)(1) Except as provided in paragraph (2), an attorney may not withdraw his or her appearance without leave of court.

(2) An attorney may withdraw . . . without leave of court if another attorney (i) has previously entered or (ii) is simultaneously entering an appearance on behalf of the party, and the change of attorneys does not delay any stage of the litigation.

(c) Leave of court to withdraw an appearance shall be sought by petition pursuant to subdivision

(d) or subdivision (e) as may be applicable [containing the procedural requirements depending on if the petitioning attorney knows (or does not know) the location "whereabouts" of the represented party].

represent the client before the IRS, with appropriate protective measures implemented, including fully screening the first practitioner off from any involvement in the representation. (For attorneys and CPAs, the professional responsibility and conduct rules and any official, formal interpretations or ethical opinions of the relevant jurisdiction should be consulted.)

■ **An Alternative Resolution**

Finally, in circumstances that meet all of section 10.29(b)'s three elements, a practitioner can continue to represent one or more clients affected by the conflict:

1. The practitioner reasonably believes that they will be able to provide competent and diligent representation to each affected client.
2. The representation is not prohibited by law.
3. Each affected client waives the conflict of interest and gives their informed consent, confirmed in writing by the client, at the time the conflict of interest is known to the practitioner.

The confirmation may be made within a reasonable period of time, but no more than 30 days after the time the practitioner knows of the conflict. Further, the practitioner must retain copies of the written consents for 36 months after the representation ends and provide them to the IRS upon request.

It is the responsibility of all practitioners to ensure that their representational activities align with and do not violate Circular 230's conflict-of-interest requirements. Effective handling of conflicts (whether they're foreseeable or actual) involves a structured, ongoing strategy that begins with systematic screening procedures at client intake. Practitioners should establish clear protocols for initial consultations, information gathering, and risk assessment to detect probable conflicts early. The process then continues with regular reviews conducted throughout the practitioner-client relationship that was formed for the represented IRS matter(s). Additionally, comprehensive documentation at all stages is a key step in maintaining and demonstrating (if needed) section 10.29 compliance.

Being diligent when it comes to conflicts of interest will benefit not only your clients but also you and your practice and the nation's tax system.