case that potential conflicts exist. Absent an objection, a defendant must later show the existence of an "actual conflict of interest which adversely affected his lawyer's performance." Once it is established that a conflict did actively affect the lawyer's joint representation, however, a defendant need not additionally prove that the lawyer's representation was prejudicial to the outcome of the case.[320]

As to attorney competence, although the Court touched on the question in 1970,[321] it did not articulate a general Sixth Amendment standard for adequacy of representation until 1984 in *Strickland v. Washington*.[322] There are two components to the *Strickland* test: deficient representation and resulting prejudice to the defense so serious as to bring the outcome of the proceeding into question.[323] The gauge of deficient representation is an objective standard of rea-

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[320] Cuyler v. Sullivan, 446 U.S. 335, 348–50 (1980). *Accord But see* Wood v. Georgia, 450 U.S. 261 (1981) (where counsel retained by defendants' employer had conflict between their interests and employer's, and all the facts were known to trial judge, he should have inquired further); Wheat v. United States, 486 U.S. 153 (1988) (district court correctly denied defendant's waiver of right to conflict-free representation; separate representation order is justified by likelihood of attorney's conflict of interest). Where an alleged conflict is not premised on joint representation, but rather on a prior representation of a different client, for example, a defendant may be required to show actual prejudice in addition to a potential conflict. Mickens v. Taylor, 535 U.S. 162 (2002). For earlier cases presenting more direct violations of defendant's rights, *see* Glasser v. United States, 315 U.S. 60 (1942); United States v. Hayman, 342 U.S. 205 (1952); and Ellis v. United States, 356 U.S. 674 (1958).

[321] In McMann v. Richardson, 397 U.S. 759, 768–71 (1970), the Court observed that whether defense counsel provided adequate representation, in advising a guilty plea, depended not on whether a court would retrospectively consider his advice right or wrong "but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *See also* Tollett v. Henderson, 411 U.S. 258, 266–69 (1973); United States v. Agurs, 427 U.S. 97, 102 n.5 (1976).

[322] 466 U.S. 668 (1984). *Strickland* involved capital sentencing, and the Court had left open the since-resolved issue of what standards might apply in ordinary sentencing, where there is generally far more discretion than in capital sentencing, or in the guilt/innocence phase of a capital trial. 466 U.S. at 686.

[323] The Court often emphasizes that the *Strickland* test is necessarily difficult to pass: Ineffective assistance of counsel claims can put rules of waiver and forfeiture at issue and otherwise threaten the integrity of the adversarial system if wide-ranging, after-the-fact second-guessing of counsel's action is freely encouraged. *E.g.*, Harrington v. Richter, 562 U.S. ___, No. 09–587, slip op. at 15 (2011). Furthermore, ineffective assistance of counsel claims frequently are asserted in federal court to support petitions for writs of *habeas corpus* filed by state prisoners. Making a successful *Strickland* claim in a *habeas* context, as opposed to direct review, was made doubly daunting by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Pub. L. No. 104–132, § 104, 110 Stat. 1218–1219, amending 28 U.S.C. § 2254. After the passage of AEDPA, one must go beyond showing that a state court applied federal law incorrectly to also show that the court misapplied established Supreme Court precedent in a manner that no fair-minded jurist could find to be reasonable. Harrington v. Richter, 562 U.S. ___, No. 09–587, slip op. at 10–14, 15–16 (counsel's decision to forgo inquiry into blood evidence held to be at least arguably reasonable). *See also* Cullen v. Pinholster, 563 U.S. ___, No. 09–1088, slip op. at 15–16 (2011); Burt v. Titlow, 571 U.S. ___, No. 12–414, slip op. (2013) (attorney's ethical lapses do not make the attorney's representation *per se* ineffective).