

Duties to a Former Client

Attorneys sometimes call the WSBA Ethics Line [(800) 945-9722 ext. 8282] concerned about accepting representation adverse to a former client. [RPC 1.9, Duties to Former Clients](#), explains an attorney's duties to a former client. **While taking a case against a former client might feel disloyal, it may not violate the ethics rules.** We provide a snapshot of RPC 1.9 here; be sure to read the rule and its comments in their entirety.

First: Determine if this is a current or former client.

The ethics rules that apply differ depending on whether the party at issue is a current client, [RPC 1.7](#), or a former one, [RPC 1.9](#). This decision is not so obvious since clients may think they are current even if you haven't done anything for them for quite some time, particularly if you've served them on a variety of matters over a long period of time. A clear letter of termination by the lawyer is best. See [RPC 1.3, Comment 4](#).

Second: Is there a conflict?

[RPC 1.9\(a\)](#) prohibits an attorney from representing a new client **materially adverse** to a former client **in the same or substantially-related** matter that the attorney represented the former client unless the former client gives written informed consent. What is "materially adverse"? This is usually interpreted as direct adversity of interests. ABA Formal Ethics Op. 99-415 (1999). What does "**substantially-related**" mean? Matters are substantially-related if they "**involve the same transaction or legal dispute or if there is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.**" RPC 1.9 [Comment 3](#). If there is not material adversity in the same or substantially related matter, you don't have a conflict. If you have a conflict, either don't take the case, or seek written, informed consent from the former client.

Third: Do you have confidential information?

[RPC 1.9\(c\)](#) prohibits an attorney who represented a client from **using information** related to that representation to the disadvantage of the former client – even if it's not the same or substantially-related matter. Information that has become generally known, such as in the public record, will not normally disqualify an attorney. [RPC 1.9 Comment 8](#). This section is only a restriction on the **use or disclosure** of confidential information and is unrelated to the conflict analysis above.

Advisory Opinions on ethical matters are available on WSBA.org. See [Opinion 2075](#) and [Opinion 2049](#) for examples illustrating RPC 1.9.

If a case involves a former client, ask yourself if there's any question the client may believe your representation is current. Then, if there isn't a conflict and you don't use confidential information, you may be good to go. Many situations can be more complex than the above discussion and require consideration of other rules, for instance cases involving imputed representation of a firm, [RPC 1.10](#), representation of an organization, [RPC 1.13](#), or duties to a prospective client, [RPC 1.18](#). If you have concerns, contact the WSBA Ethics Line at (800) 945-9722, ext. 8284.