



## Committee on Professional Ethics

Opinion #303 - 10/17/73 (29-73) Topic: Conflict of Interest

Digest: Lawyer may represent client against former client only where matter is unrelated and confidential information obtained in former matter is not relevant.

Code: EC 9-3; DR 9-101(B)  
EC 4-5; EC 4-6; DR 4-101(B)  
Canon 9

### QUESTION

May a former attorney for a school district represent a teacher in a hearing before the public employment relations board concerning events which have taken place since his representation of the school district terminated?

### OPINION

After a lawyer leaves public employment he should not accept private employment in any matter in which he had responsibilities while he was a public employee. EC 9-3; DR 9-101(B); N.Y. State 176 (1971). However, where the proposed employment is unrelated to any matter for which the attorney had responsibility while he was attorney for the school district he may, without the consent of the former client represent a client in a matter against a former client, provided that:

(1) The subject matter of the employment is totally unrelated to matters in which the attorney has represented the former client. N.Y. State 139 (1970).

(2) Such representation will not injure the former client with regard to matters in which the attorney counselled him. N.Y. County 446 (1956); ABA Inf. 647 (1963).

(3) The attorney does not have confidential information arising from his former representation that might be relevant to the new matter. EC 4-5; EC 4-6; DR 4-101; N.Y. State 25 (1966).

(4) The new alliance creates no impression of conflicting interests or professional disloyalty in light of the attorney's previous relationship with his former client. Canon 9; ABA Inf. 885 (1965).

Therefore, in the absence of any legal impediment, the proposed representation of the teacher concerning matters which occurred

OVER---

**NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion**

Opinion #303

-2-

after the attorney terminated his representation of the school district would not be improper provided the above guidelines are not being violated. See N.Y. State 25 (1966). As stated in In re Boone, 83 Fed. 944, 952-953 (N.D. Cal. 1897):

"The test of inconsistency is not whether the attorney has ever appeared for the party against whom he now proposes to appear, but it is whether his accepting the new retainer will require him, in forwarding the interests of his new client, to do anything which will injuriously affect his former client in any matter in which he formerly represented him, and also whether he will be called upon, in his new relation, to use against his former client any knowledge or information acquired through their former connection."

-----