



**New York State Bar Association  
Committee on Professional Ethics**

**Opinion 1265 (04/26/2024)**

**Topic:** Conflicts of interest, former clients

**Digest:** A lawyer formerly employed by a Legal Aid Society office would not have a conflict in representing a client in a matter adverse to a party who had been represented by other lawyers in that office at that time unless the lawyer, while at Legal Aid, acquired confidential information that was material to the new matter and the matters were substantially related.

**Rules:** 1.0(h), 1.6(a), 1.9(b)-(c)

**FACTS:**

1. The inquirer was employed by the Legal Aid Society of her county for a number of years, representing clients in Family Court. She left employment at Legal Aid and practiced in another area of the law and now is representing clients in the same Family Court in private practice (not as an employee of the Legal Aid Society). She inquires whether she has a conflict in representing clients adverse to a party that was represented in Family Court by another Legal Aid Society lawyer during the time she was employed by the Society.

**QUESTION**

2. Does a lawyer formerly employed by the Legal Aid Society have a conflict of interest in appearing in Family Court adverse to a party who was represented by a different Legal Aid Society lawyer during the time that the inquiring lawyer was employed by the Society?

**OPINION**

3. This inquiry is governed by Rule 1.9 of the New York Rules of Professional Conduct (the “Rules”), and in particular by Rule 1.9(b), which provides:

Unless the former client gives informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a *substantially related* matter in which a firm with which the lawyer formerly was associated had previously represented a client: (1) whose interests are materially adverse to that person; and (2) about whom the lawyer had *acquired information* protected by Rules 1.6 or paragraph (c) of this Rule that is material to the matter. [Emphasis added.]

4. The Rules define the term “firm” to include a Legal Aid Society office. See Rule 1.0(h) (defining “firm” to include “lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law” and “lawyers employed in a qualified legal assistance organization”). Paragraph (c) of Rule 1.9, also referred to in the excerpt quoted above, bars a lawyer who formerly represented a client, or whose law firm formerly represented a client, from using confidential information of the client protected by Rule 1.6 adverse to the former client or revealing such information in most circumstances.

5. Rule 1.6(a) provides that a “lawyer shall not reveal confidential information. . . or use such information to the disadvantage of a client” unless certain requirements are met. “‘Confidential information’ consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential.”

6. Under Rule 1.9(b), a lawyer who did not herself represent a client of the Legal Aid Society would have a conflict in representing someone “materially adverse” to that former Legal Aid Society client only if the lawyer had “acquired” confidential information that was “material” to the new matter and if the matters were “substantially related.” Comment [3] to Rule 1.9 explains that “[m]atters are substantially related for purposes of this Rule if they involve the same transaction or legal dispute or if, under the circumstances, a reasonable lawyer would conclude that there is otherwise a substantial risk that confidential factual information that would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” We are unable to determine whether the two matters in question here are substantially related. But even if the matters were substantially related, if the lawyer did not acquire material confidential information about the former matter on which other Legal Aid Society lawyers worked (but on which the inquirer personally did not work), then the lawyer would have no conflict appearing adverse to the former Legal Aid Society client.

## CONCLUSION

7. A lawyer formerly employed by a Legal Aid Society office would not have a conflict in representing a client in a matter adverse to a party who had been represented by other lawyers in that office at that time unless the lawyer, while at Legal Aid, acquired confidential information that was material to the new matter and the matters were substantially related.

(02-24)