NEW YORK STATE BAR ASSOCIATION
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New York State Bar Association
Committee on Professional Ethics

Opinion 1308 (10/26/2026)

Topic: Former client conflicts of interest; imputation of conflicts to government agencies; material limitation conflicts of interest.

Digest: A lawyer employed by a government agency (the "Agency") that represents individuals in Mental Hygiene Law proceedings is not automatically disqualified from representing an Article 10 respondent merely because the alleged victim of the respondent's alleged underlying offense was previously represented by a different lawyer in the same agency in an Article 9 commitment matter. The prior representation may create a former-client conflict for the lawyer who represented the former client if the matters are substantially related and there is material adversity under Rule 1.9(a), but that conflict is not imputed to other lawyers in the government law office because, as amended effective July 7, 2025, Rule 1.11, rather than Rule 1.10, governs conflicts involving current government lawyers.

Nevertheless, the lawyer representing the Article 10 respondent may have a separate material limitation conflict under Rule 1.7(a)(2) if the lawyer is aware of confidential information obtained through the agency's prior representation of the former client and that information is material to the current matter. In that circumstance, representation would require informed consent, and may be prohibited if informed consent cannot be obtained without revealing the former client's confidential information.

Rules:1.0(h); 1.6; 1.7; 1.9, 1.10, 1.11

FACTS:

1. The inquirer is a lawyer working for a government agency that provides legal representation to individuals in proceedings under the Mental Hygiene Law (the "Agency"). Specifically, the Agency represents individuals who are involuntarily admitted to mental hygiene facilities under Article 9 of the Mental Hygiene Law, and it also represents respondents in proceedings brought under Article 10 of the Mental Hygiene Law.

2. The Agency represents a particular respondent in a pending Article 10 proceeding. During this proceeding, the Agency learned that the person allegedly victimized in the Article 10 respondent's alleged offense is a person whom the Agency previously represented (the "former client" in connection with an involuntary admission, under Article 9 of the Mental Hygiene Law, to a facility within the Agency's jurisdiction. While representing the former client, the Agency learned confidential information about the former client.

3. The inquirer asks whether, under these circumstances, the Agency is permitted to represent the respondent in the Article 10 proceeding or whether the Agency must instead decline the

representation because the Agency previously represented the former client in the Article 9 proceeding.

QUESTION:

4. When an Agency attorney represents a respondent in a proceeding under Article 10 of the Mental Hygiene Law and learns that respondent's alleged victim is a person the Agency previously represented in connection with an involuntary admission under article 9, whose confidential information came into the Agency's possession through its statutory duties, do the New York Rules of Professional Conduct create an immediate conflict of interest for the Agency and its attorneys that requires withdrawal and the appointment of substitute counsel?

OPINION:

5. We assume that the Agency employs multiple lawyers. We also assume that the lawyer currently representing the respondent in the Article 10 proceeding is a different lawyer from the lawyer who previously represented the former client in the Article 9 proceeding. As detailed below, this fact is critical in determining whether the Agency may undertake the representation of the Article 10 respondent.

Does the Representation of the Article 10 Respondent Create a Conflict of Interest?

6. The situation described above may present a former-client conflict of interest under New York Rule of Professional Conduct ("Rule") 1.9.

7. Rule 1.9(a) provides that a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

8. Here, the Article 10 respondent's alleged victim is a former Article 9 client of the Agency. An Agency lawyer represented the former client in connection with that person's involuntary admission under Article 9 of the Mental Hygiene Law. That Agency lawyer owes the former client duties under Rule 1.9 that survived the termination of the prior representation.

9. The next question, therefore, is whether the inquirer's representation of the respondent in the Article 10 proceeding is substantially related to the other Agency lawyer's prior representation of the Article 9 client. Comment [3] to Rule 1.9 states that matters are substantially related if they involve the same transaction or legal dispute or if there is a substantial risk that confidential factual information that would normally have been obtained in the prior representation would materially advance the current client's position in the subsequent matter. N.Y. State 1029 (2014) applies the same framework in the government-lawyer context, distinguishing between the same matter, a substantially related matter, and a matter that merely presents overlapping legal issues but is neither the same nor substantially related. N.Y. State 1274 (2024) likewise explains that the Rule 1.9 inquiry turns on whether confidential information normally acquired in the prior representation would be "material" to and would materially advance the later adverse representation.

10. The determination of whether matters are substantially related is fact-specific and must be evaluated on a case-by-case basis. Here, it is our understanding that a proceeding brought under Article 10 of the Mental Hygiene Law is based on a pre-existing and final criminal conviction (i.e., a conviction where no further appeal is possible). As a result, the inquirer representing the Article 10 respondent would not be required to re-litigate the respondent's criminal conviction, which could include questioning the credibility of the former client. Under these circumstances, it appears unlikely that the representation of the Article 10 respondent would be substantially related to the previous representation of the Article 9 respondent.

11. In addition, given that the facts in the Article 10 proceeding related to the underlying crime where the former client was the victim have already been finally established as a matter of law, it is unlikely that the inquirer will be asked to take a position that is materially adverse to the former client.

12. If, however, the two matters were substantially related and competent representation would involve the inquirer taking a position materially adverse to the former client, then the lawyer who previously represented the former client in the Article 9 proceeding would be conflicted from representing the Article 10 respondent absent informed consent from both clients, confirmed in writing. See Rule 1.9(a).

Is a Conflict Imputed to the Rest of the Agency?

13. Assuming there is a conflict of interest under Rule 1.9(a), the next question is whether the conflict associated with the Agency lawyer's prior representation of the former client in the Article 9 proceeding is imputed to the rest of the Agency, including the inquirer.

14. Rule 1.10(a) provides that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9," absent certain exceptions that are not applicable here.

15. Rule 1.0(h) states that the definition of a "firm . . . includes, but is not limited to, a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization."

16. Here, because the Agency is a government law office, the lawyers working for the Agency are subject to Rule 1.11 instead of Rule 1.10's general rule of imputation. This is the new paradigm in New York. Effective July 7, 2025, the courts amended Rule 1.10 to clarify that "[t]he disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11 and not by [Rule 1.10]." See Rule 1.10(h).

17. Rule 1.11(d)(1) further states that "[e]xcept as law may otherwise expressly provide, a lawyer currently serving as a public officer or employee is subject to Rules 1.7 and 1.9 but is not subject to Rule 1.10." (Emphasis added.)

18. This Committee recently addressed a similar issue in N.Y. State 1300 (2026), where we reasoned that conflicts of interest in a government law office are not imputed to other government lawyers under Rule 1.10 because Rule 1.11 controls.

19. Rule 1.11(d)(2) further provides that a current government lawyer "shall not participate in a matter, unless under applicable law no one is (or by lawful delegation may be) authorized to act in the lawyer's stead in the matter, if the lawyer . . . has a conflict under Rule 1.7 or 1.9." Here, we are not aware of facts to suggest that any other lawyer at the Agency would be prohibited from acting in the stead of the lawyer who represented the former client in the Article 9 proceeding.

20. Accordingly, while the lawyer who represented the former client in the Article 9 proceeding would be disqualified from representing the Article 10 respondent if a conflict exists under Rule 1.9(a) (and if the former client has not given informed consent, confirmed in writing), that conflict would not be imputed to the remainder of the lawyers in the Agency.

Does the Agency's Possession of Confidential Information Related to Its Former Client Create a Material Limitation Conflict of Interest?

21. In addition to the imputation question discussed above, the inquiry raises the question of whether the inquirer would be prohibited from representing the Article 10 respondent by a material limitation conflict under Rule 1.7(a)(2).

22. Rule 1.7(a)(2), as amended effective November 10, 2025, prohibits a lawyer from representing a client where "there is a significant risk that . . . the representation of one or more clients otherwise will be materially limited by, the lawyer's responsibilities to another client, a former client or a third person or by the lawyer's own financial, business, property or other personal interests." (Emphasis added.)

23. Here, to the extent the Agency's files from the previous representation of the former client contain confidential information about the former client, the Agency and its lawyers owe the former client a duty of confidentiality, including a duty not to use any of that confidential information to the former client's disadvantage. See Rule 1.6(a).

24. If the Agency's files contain confidential information about the former client that is material to the Article 10 proceeding, and the inquirer is aware of that information, then the inquirer would have a conflict of interest that would prohibit the inquirer from representing the Article 10 respondent. Specifically, if the inquirer is aware of the former client's confidential information and if that information would be material to the representation of the Article 10 respondent, but if Rule 1.9(c) prohibits the inquirer from using that confidential information to advance the Article 10 client's interests, then the inquirer's obligation to competently represent the Article 10 respondent would be materially limited by the inquirer's confidentiality obligations to the former client. See N.Y. City 2005-02 (2005) (finding a personal interest conflict where "the lawyer's professional judgment on behalf of a client would be affected by knowledge of information from a prior representation that the lawyer cannot use or disclose").

25. In that case, the inquirer would be required to obtain informed consent from the Article 10 respondent, if possible, to the material limitation on the inquirer's ability to represent the Article 10 respondent. See Rule 1.7(b). If the inquirer could not obtain informed consent without disclosing confidential information about the former client gained during the previous representation, then the inquirer would be unable to represent the Article 10 respondent. N.Y. City 2001-03 (2001).

26. If, however, the inquirer is not aware of material confidential information about the former client from the previous representation, then no such material limitation would exist on the inquirer's representation of the Article 10 respondent. Similarly, where the Agency takes steps to restrict the inquirer's access to the former client's confidential information, such as erecting a screen or adopting a policy that restricts access to closed files, those actions would also weigh against a finding of a conflict based on access to a former client's confidential information. See N.Y. City 2005-02 (2005).

CONCLUSION:

27. A lawyer for a government agency is generally not disqualified from representing a respondent in a proceeding under Article 10 of the Mental Hygiene Law where the alleged victim in that proceeding is a former client who was represented in a commitment proceeding under Article 9 of the Mental Hygiene Law by a different lawyer from the same Agency.

28. Even if the representation of the Article 10 respondent is substantially related to the previous representation of the former client and the representation of the Article 10 respondent is materially adverse to the former client, that conflict would not be imputed to the lawyer representing the Article 10 respondent.

29. If the lawyer representing the Article 10 respondent is aware of confidential information from the representation of the former client that would be material to the Article 10 proceeding, however, such that the lawyer would have a material limitation on his or her ability to represent the Article 10 respondent, then the lawyer would be prohibited from representing the Article 10 respondent absent informed consent from the former client.

(22-26)