



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am an in-house lawyer for a utility company, part of a six-person law department. For many years, I worked for a smaller utility company in another state before being recruited to my current employer/client. At our morning meeting today, I learned that we are a part of a substantial regulatory case involving a rule-making proceeding and that we are adverse (on the other side of a major issue) to my former employer. Is this a problem? Is there something I should do?

A: As with many situations, the answer is "it depends." First, let's start with the applicable rule. Because the party adverse to your current client is a former client of yours, the applicable rules are Model Rule 1.9 relating to conflicts with former clients, and Rule 1.10, the imputed conflict rule. I assume from your question that you are not actively involved in the current matter. If you were, then you would have a conflict of interest under Rule 1.9(a) if the current matter is the "same or substantially related" to a matter in which you represented your former client, and/or under Rule 1.9(b)(2) if you had acquired confidential information material to the matter while at your former employer.

Furthermore, under the rules, a law department is treated as a "firm." Model Rule 1.0(c). Thus, if you have a conflict, then your entire law department would have a conflict by imputation under Rule 1.10(a), unless the detailed screening and notice process in Rule 1.10(a)(2) is timely followed. On the other hand, if you were not involved in the same or a substantially related matter at your prior employer and also acquired no material confidences about it, then you have no issue.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 132 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.