



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am a lawyer with a small firm. Recently, one of our partners (Betty) left the firm to join another firm, and Betty took with her a significant client that she had brought to the firm. She took all the client files (paper and electronic) and also took with her the only associate who had worked on any of that client's matters. Now, a month later, a dispute has erupted between one of my clients and Betty's client, and they want me to represent them in a suit against Betty's client. I am worried that Betty's client was also a client of our firm only a month ago. Does this create a conflict issue for us either under the former client rule 1.9, or the imputation of conflicts rule 1.10?

A: The timing has worked to your advantage – you are clear. Rule 1.10(b) provides that when a lawyer has terminated their association with a firm, the firm is not thereafter prohibited from being adverse to a client represented by that formerly associated lawyer, and not currently represented by the firm, unless (1) it is the same matter or substantially related to that in which the formerly associated lawyer represented the client while at the firm; or (2) any lawyer remaining in the firm has confidential information protected by Rules 1.6 and 1.9(c) that is material to the matter, in any form -- paper, electronic or in their head. Here, all the records are gone, and the only lawyers who had knowledge of the former client's confidential information in their head are also gone. So, no conflict!

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 125 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.