

WHEN DOES A CURRENT CLIENT BECOME A FORMER CLIENT?

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Reprinted from *Minnesota Lawyer* (March 1, 2004)

Current clients and former clients — each of these stages create different obligations and affects the attorney's ability to represent others. When a current client becomes a former client is not always clear. Since the answer can make a substantial difference in analyzing conflicts of interest, however, an attorney should seek to avoid confusion.

Different treatment

The Rules of Professional Conduct do not specifically define what is a current client or former client, but the two are treated quite differently for conflict of interest purposes.

To oversimplify, under Rule 1.7(a) of the Minnesota Rules of Professional Conduct (MRPC), an attorney may not represent another client adverse to a current client even in a completely unrelated matter. Under Rule 1.9(a), however, an attorney may represent a client adverse to a former client, unless the two matters are the same or substantially related.

Despite the fact that some conflicts can be cured through informed consent, this difference in the approach of the rules as to whether the opposing party is a current or a former client will usually determine whether the attorney may or may not accept a new client.

When a lawyer completes a legal representation, she can easily make it clear that the client is no longer a current client. An unambiguous letter terminating the representation will suffice. Where there is no letter ending the attorney-client relationship, then the answer to whether an attorney-client relationship still exists must be that "it depends."

If the lawyer completed a single finite matter for the client, it is unlikely that any ongoing relationship should be inferred. But a lawyer or law firm [Ftn 1](#) that has regularly performed work for a client over a lengthy time still may be considered to be the client's lawyer even if no work has been sent to the firm recently. [Ftn 2](#) In such situations the reasonable belief of the client is perhaps the most important factor to consider. [Ftn 3](#)

The comment to MRPC Rule 1.3 supports these views, stating in part: "If a lawyer's employment is limited to a specific matter the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so."

There may be the temptation to formally end the relationship with one client in order to turn the client into

a former client just so that a new, more lucrative representation adverse to the client immediately can be undertaken, one that would be prohibited if the client remains a current client.

Even though an attorney may prospectively withdraw from representing a client, dropping a client “like a hot potato,” as it is known, is generally not permitted. The lawyer’s principal motivation for withdrawal should not be the financial desire to represent a new client against the dropped one.[Ftn 4](#)

Whether an individual is a current or former client affects other conflict of interest rules as well. For example, Rule 1.8(a) of the MRPC sets out the requirements for entering into a business transaction with a client, including various written disclosures and consent that must be obtained.

Not all of these protections are required with nonclients and with former clients. Note, however, that fiduciary bonds between a lawyer and client may last longer after the end of representation when applied to business transactions.

As one commentator wrote, “The dependency relationship does not automatically cease when the formal relationship comes to an end. The influence created by the relationship can outlive it and forms a proper basis for imposing continuing fiduciary obligations on a lawyer in a business arrangement with a former client. . . . The safest course, and perhaps a required one, is for a lawyer to treat any business partner as a [current] client if there is any doubt whether or not the lawyer-client relationship exists with the person.”[Ftn 5](#) This remains sound advice.

[1] The general rule, subject to several exceptions, is that conflicts are imputed to all lawyers within a law firm. MRPC Rule 1.10(a).

² See, e.g., *Oxford Systems Inc. v. Cellpro Inc.*, 45 F.Supp.2d 1055 (W.D. Wash. 1999) in which a 13-year relationship during which the law firm handled all matters for a particular client was found sufficient to create a reasonable belief by the client that the firm was its lawyer, despite an approximately one-year break since the last legal services were performed.

³ See discussion in Dietrich, “Determining Current and Former Clients,” in the August 2000 issue of *Wisconsin Lawyer*. See also, Pennsylvania Bar Assn. Opinion 2001-08 (law firm that did corporate work for a company over a two-year period that ended two years ago may represent the company’s opponent unless there are facts indicating that the company reasonably believes it is still a current client).

⁴ Restatement (Third) of the Law Governing Lawyers sec. 132 Comment c.

⁵ Wolfram, “Modern Legal Ethics,” p.482 (West 1986).