



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I have an opportunity to land a new corporate client that is very active in a number of practice areas (acquisitions, regulatory issues, litigation, etc.). This would be a game-changer for me and for our firm, generating millions and keeping many people busy.

Unfortunately, when I ran a conflict check, it appears that our firm is adverse to the prospective new client in a relatively small litigation matter for an existing client. The existing client has never generated more than \$25,000 per year in revenue for the firm. Assuming the existing client would not be prejudiced by a change of counsel, can we simply help find that client new counsel, arrange an orderly transition at our expense, withdraw from the existing relationship to avoid a current client conflict, and then proceed to represent the new client on unrelated new matters?

A: If the existing client consents to this approach, then there is no issue. If the client does not consent, then the answer to this question resides at the intersection of Model Rule 1.16, the rule governing withdrawal, and the judicially-created "hot potato" doctrine that has been applied in many courts. Under this doctrine, lawyers are discouraged from "firing" (dropping like a "hot potato") one client to avoid a conflict of interest that would result from representation of another. When applied, the doctrine continues treatment of the "dropped" client as a current client, applying Rule 1.7 for purposes of conflicts rather than the former client rule, Rule 1.9. The doctrine was created even before adoption of the Model Rules of Professional Conduct, and is not reflected in the language of the rules. It has been applied inconsistently in various jurisdictions.

ABA Formal Op. 516 (April 2, 2025) discussed Rule 1.16 in this context. Rule 1.16 specifies circumstances under which a lawyer must (mandatory) or may (permissive) withdraw from a representation. Rule 1.16(b)(1) permits the lawyer to voluntarily end the representation even without "good cause" if "withdrawal can be accomplished without material adverse effect on the interests of the client." Op. 516 discusses what constitutes "material adverse effect," e.g., prejudice when withdrawal would disrupt the closing of a deal, or where timing is otherwise an important factor, but concludes that Rule 1.16(b)(1) "does not protect a client's interest simply in maintaining an ongoing client-lawyer relationship, protect against the client's disappointment in losing the lawyer's services, or

prohibit withdrawal based on the client's perception that the lawyer is acting disloyally by ending the representation."

In other words, Rule 1.16(b)(1) examines the effect of withdrawal and any efforts to remediate any adverse effect; it does not examine or depend upon the lawyer's motive to withdraw. *Id.* at 8. The opinion notes and discusses the "hot potato rule," but states that it is neither derived from Rule 1.16 "nor any other professional conduct rule." *Id.* at 7. Notably, a dissent to the opinion opines that the "hot potato" portion of the opinion is "incomplete" in that it does not address the "breadth" of the doctrine as applied in cases, although it does not dispute that Rule 1.16(b)(1) does not address the lawyer's motive to withdraw.

In your case, you should first attempt to reach agreement with your existing client on withdrawal, including anything your firm can do to mitigate or lessen any adverse effect from withdrawal, such as assistance in locating and bringing replacement counsel up to speed (perhaps at your firm's expense). If agreement cannot be reached, then examine the "hot potato doctrine" precedent in the jurisdiction applicable to your representation of the existing client. Determine whether there is room to argue, as suggested in Opinion 516, that Rule 1.16(b)(1), as adopted in the applicable jurisdiction, permits withdrawal without examination of motive if you can demonstrate that "no material adverse effect" would occur to your existing client from the withdrawal.

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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.