

New Jersey Supreme Court Elaborates on Meaning of “Substantially Related Matters” Under Former-Client Conflicts Rule

Lawyers for the Profession® Alert

Lawyers for the Profession® Alert | 2 min read

Jun 10, 2010

City of Atlantic City v. Trupos, 201 N.J. 447, 992 A.2d 762 (2010)

Brief Summary

The New Jersey Supreme Court held that, for purposes of disqualifying a lawyer based on a former-client conflict, either (1) the lawyer must have received confidential information from the former client that can be used against that client in the current matter, or (2) facts relevant to the former representation must be relevant and material to the current representation.

Complete Summary

A law firm represented Atlantic City in certain real estate tax appeals in 2006 and 2007. The firm discontinued this representation and later represented a number of taxpayers in an appeal of 2009 real estate tax assessments. The city moved to disqualify the law firm under the former-client conflict rule asserting that the firm’s former representation and current representation were substantially related. The New Jersey Supreme Court held that the matters were not substantially related.

For purposes of disqualifying a lawyer — which requires a balance between clients’ right to counsel of their choice and safeguarding the highest professional standards — the Court held that matters are substantially related if:

- (1) the lawyer . . . received confidential information from the former client that can be used against that client in the subsequent representation of parties adverse to the former client, or (2) facts

relevant to the prior representation are both relevant and material to the subsequent representation.

The Court noted that the burden of establishing former-client status rests on the alleged former client, and that once this burden has been met, the burden of production shifts to the lawyer(s) facing disqualification to establish that the matters were not substantially related. But the burden of *persuasion* on this latter issue remains with the moving party.

The Court held that the city failed to meet its burden of persuasion because it did not point to any potentially harmful confidential information it shared with the law firm, and because the firm's prior work for the city involved different properties, appraisers and relevant facts. The law firm did participate in the city's selection of a revaluation company which later participated in the 2009 tax assessments, but the Court held that absent evidence that the firm was privy to substantive information such as that company's valuation methodology, this fact did not establish that the firm received relevant confidential information during its representation of the city.

Significance of Opinion

This is the first New Jersey case to elaborate on the meaning of "substantially related matters" since the state overhauled its Rules of Professional Conduct in 2004. Unlike some jurisdictions which may focus on whether allegedly related matters involve overlapping issues of law, New Jersey's test largely focuses on whether the matters are substantially *factually* related. This test requires more than an appearance of impropriety and more than a mere inference that certain confidential information that could be used adversely was shared during the prior representation. This decision is consistent with cases in other jurisdictions that will not presume that there is an actionable ethical violation without some basis to conclude that there is actual harm or prejudice.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.