



Ethics and Professional Responsibility in the Practice of Special Education Law

Garrett Williams
Stevens Clay, P.S.



Attendance

- Who's in the room today?
 - Parents?
 - School District Staff?
 - Parent Attorneys?
 - School Attorneys?
 - Advocates?
- When was the last time you called the WSBA Ethics Hotline?
- What about the Council of Administrators of Special Education?



Agenda

- Ethical Implications of AI
 - ABA Formal Opinion 512
- [Informed Consent \(RPC 1.0\)](#)
 - Parental Consent ([WAC 392-172A-03000](#))
- [Conflicts of Interest \(RPC 1.7\)](#)
 - Organization as a Client ([RPC 1.13](#))
 - Duties to Former Clients ([1.9](#))
- [Confidentiality \(RPC 1.6\)](#)
 - Advisory Opinion
- [Safeguarding Property \(RPC 1.15\)](#)
 - Disciplinary Actions

Ethical Implications of AI

Considerations for lawyers

Briefs Without Brains

"If I only had a brain..." - Scarecrow (after drafting a brief).

Behind his big curtain of legal technology, Attorney Oz uses Scarecrow (ChatGPT) to draft a due process hearing brief. Toto (the paralegal pup) pastes it into the final file, complete with fake citations and Dorothy's full name.

Ethical Issues?



Made using OpenAI (2025).



ABA Guidance on Using Generative AI

- Takeaways from ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 512 (2024).
 - "To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide **competent** legal representation, to **protect client information**, to **communicate** with clients, to **supervise** their employees and agents, to advance only **meritorious claims** and contentions, to ensure **candor towards the tribunal**, and to charge **reasonable fees**."
 - Informed client consent is required before inputting confidential or case-related information into an AI tool that might retain or use data.
 - Risk assessments must be fact-specific.
 - Evaluate the sensitivity of the information, the capabilities of the AI tool, and the likelihood of disclosure.
 - Understanding the AI tool's terms of service is essential.
 - Always review privacy policies and data handling practices before using AI with client matters.



Duty of Competence

- [RPC 1.1](#)

- A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- [Comment 8](#)

- To maintain requisite knowledge and skill, *a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which a lawyer is subject.



Confidentiality of Information

- [RPC 1.6](#)

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) ... prevent death or harm; ...prevent commission of crime; ...prevent fraud; ...seek counsel on ethical duties; ... court orders; ... establish a claim against the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

- [Comment 2](#)

- A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation.



Communication with Clients

- [RPC 1.4](#)
 - (a) A lawyer shall:
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (b) A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.
- ABA Formal Opinion 512 advises that lawyers consider whether specific circumstances necessitate consulting clients about using AI tools, taking into account the client's needs and expectations, the scope of the representation, and the sensitivity of the information involved.



Supervising Others Who Use ChatGPT

- [RPC 5.1](#)

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

- [RPC 5.3](#)

- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.



Meritorious Claims and Candor Toward Tribunal

- [RPC 3.1: Meritorious Claims and Contentions](#)
 - A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.
- [RPC 3.3: Candor Toward the Tribunal](#)
 - (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
- ABA Formal Opinion 512 emphasizes that information generated by a GAI must be thoroughly reviewed to ensure that any assertions made to the court are accurate.



Reasonable Fees

- [RPC 1.5](#)

- (a) A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses.

- • According to ABA Formal Opinion 512, a lawyer must explain the basis for any charges related to the use of AI tools or services before billing a client, ideally in writing. Lawyers are prohibited from charging unreasonable fees for using GAI. Additionally, lawyers cannot bill clients for the time spent learning how to use GAI tools or services.



Who Is Reviewing the Information?

- ChatGPT FAQ:
 - Who can view my conversations?
 - “As part of our commitment to safe and responsible AI, we review conversations to improve our systems and to ensure the content complies with our policies and safety requirements.”
 - Will you use my conversations for training?
 - “Yes. Your conversations may be reviewed by our AI trainers to improve our systems.”
 - Can you delete specific prompts?
 - No, we are not able to delete specific prompts from your history. *Please don't share any sensitive information in your conversations.*

Hilton v. Bellevue School District

- Prompt:
 - Can you explain the Hilton v. Bellevue School District case determining special education rights for students over 22. Include case citations.
- Response:
 - The case Hilton v. Bellevue School District, 328 F.3d 1165 (9th Cir. 2003), deals with the special education rights of students over the age of 22 under the Individuals with Disabilities Education Act (IDEA).
 - The plaintiffs, a group of students with disabilities who were over the age of 22, argued that they were entitled to continued special education services under the IDEA. They claimed that the state of Washington provided educational benefits to non-disabled students over the age of 22 through other adult education programs, and thus they should also be entitled to similar services.
 - The court clarified that while states may offer other educational opportunities to adults, these do not equate to the continuation of IDEA-mandated special education services. This case is significant for understanding the scope and limitations of special education rights under federal law, particularly concerning age.

What Kind of Generative AI (GAI) Should I Use?

- Open AI:
 - Uses your data to train future uses of the model.
 - May not have constraints restraining outputs to legitimate sources, so it may hallucinate cases.
 - Open AI (e.g. ChatGPT) does not have access to resources like Westlaw, LexisNexis, or Bloomberg Law
 - The output is guided by providing you with a satisfying answer, not a correct one.
 - Could potentially be trained on information that is out of date.
- Remember: Always check the privacy policy of the AI before deciding whether or not to use it!

What Kind of GAI Should I Use?

- Closed AI:
 - Proprietary systems are restricted to either an organization or its subscribers.
 - Trained on specific data to perform specific functions.
 - Not necessarily continually updating behavior based on user interaction.
 - Works within specific rules and guidelines, using certain behaviors and information to function effectively.
 - Examples: Lexis+ by LexisNexis; CoCounsel by Thomson Reuters; Vincent AI from vLex.
- Remember: Always check the privacy policy of the AI before deciding whether or not to use it!



GAI Tricks and Tips

- Maintain client confidentiality by:
 - Avoiding input of confidential or identifying information into public AI tools.
 - Using closed, secure versions of AI tools when available.
 - Requesting and retaining the AI tool's privacy policies.
- Ensure competence in technology by:
 - Understanding how AI tools work, including their limitations and potential biases.
 - Staying informed about updates, capabilities, and ethical implications.
 - Evaluating AI-generated work product, consider whether it is defensible, consistent, and coherent.
 - Seeking training or support when needed.



GAI Supervision Tips

- Supervising staff or AI outputs by:
 - Reviewing all AI-generated content for accuracy and legal sufficiency.
 - Training staff on proper use of AI in the legal context.
 - Documenting review processes to ensure ethical compliance.



What Should Have Attorney Oz Done?

- Oz should have verified all AI-generated content before filing.
- He should have checked the privacy policy of the AI system before inputting any information.
 - Further redact any confidential information depending on the system.
- Oz should have properly supervised his staff.
 - Oz can ensure this by implementing an AI policy for use, supervision, and/or training.
- Oz should consider whether he should disclose the use of AI to his client.



Real Life Consequences

- June 2023 - Two New York lawyers faced \$5,000 in sanctions after submitting a brief citing six non-existent judicial decisions produced by ChatGPT.
 - Per the judge, there is nothing "inherently improper" in using AI "for assistance," but ethics rules "impose a gatekeeping role on attorneys to ensure the accuracy of their filings."
- December 2023 - A Colorado lawyer was suspended for using AI to generate fake case citations in a legal brief and then lying about it.
- January 2024 - Another New York lawyer faced discipline for citing non-existent cases.
- March 2024 - The Ninth Circuit struck opening briefs and dismissed an appeal when a lawyer cited nonexistent cases and then lied about it.

Informed Consent

Communicating with parents and children

Sign Here, My Pretty!



Made using OpenAI (2025).

Aunt Em receives a magical consent form from the Munchkinland School District, proposing an initial special education evaluation and related services for Dorothy. The form looks straightforward - but buried deep in the fine print is a clause about "transportation rights" that includes Flying Monkeys to move Dorothy wherever the school decides.

Aunt Em meets with the district attorney to review a form. Overwhelmed by the legal jargon, she quickly signs it, trusting the words are harmless. Dorothy is not included in the discussion.

Ethical issues?



What is Informed Consent?

- [RPC 1.0 Terminology](#):
 - (E): "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.



Parental Consent

- [WAC 392-172A-03000](#)

- (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.
- (b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.
- (c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education services.



Special Education Informed Consent

- Informed consent is a process in which the scope of evaluation or provision of proposed services is fully explained to the parent or adult student.
- Informed means the individual providing consent has a clear and complete understanding of the activity before voluntarily agreeing to it in writing.
 - The parent need not have an **in-depth understanding** of the services a child's IEP might provide or every aspect of a proposed evaluation. Instead, for consent to be "informed," the parent must have a **general understanding** of the activity for which he is providing consent.
- It is the legal and ethical responsibility of the professional obtaining consent to ensure the parent or adult student has been provided all information relevant to the action proposed.



Communication with Clients

- [RPC 1.4](#)

- (a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



Ethical Issues at Wicked Witch School District

- What Aunt Em was told does not meet the informed consent threshold.
 - Information was not adequately explained for her to understand
- Transportation is a related service to be included in a child's IEP under the IDEA.
 - The District cannot dictate transportation without parental consent.
- Possibly involving Dorothy in the IEP building process.
 - The IDEA suggests that if the child is younger than 14, there would be no issues involving them.
 - If the child is older than 14, and it is appropriate, then the IEP team should consider including the child in the IEP process.



What About Reply All?

- Can a client give informed consent to receiving correspondence from (or corresponding with) opposing counsel?



Communicating with a Represented Party

- RPC 4.2
 - In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.
- Comment 3
 - The Rule applies even though the person represented by a lawyer initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.
- Comment 8
 - The prohibition on communication with a person represented by a lawyer only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. Thus, the lawyer cannot evade the requirement of obtaining the consent of another lawyer by closing eyes to the obvious.



What About Other Matters

- RPC 4.2 (Comment 4)
 - This Rule does not prohibit communication with a person represented by a lawyer or an employee or agent of such a person, concerning matters outside the representation.
 - ...Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make.



Advisory Opinion

- It is the opinion of the Committee on Professional Ethics that “Reply All” may be allowed if consent can be implied by the facts and circumstances, but express consent is the prudent approach.
- It would be inconsistent with RPC 4.2 for Lawyer A to initiate an email to Lawyer B and Lawyer B’s client without obtaining prior consent from Lawyer B. Accordingly, the fact that Lawyer A copies her own client on an electronic communication to which Lawyer B is replying does not by itself permit Lawyer B to “reply all” without Lawyer A’s consent.



What Does Implied Consent Look Like?

- Whether consent may be “implied” in a particular situation requires an evaluation of all the facts and circumstances surrounding the representation, including:
 - How the communication was initiated and by whom;
 - The prior course of conduct between the lawyers involved;
 - The nature of the matter and whether it is transactional or adversarial;
 - The formality of the communications; and
 - The extent to which a communication from Lawyer B to Lawyer A’s client might interfere with the client-lawyer relationship.



What Else?

- Emails and texts are often used as a substitute for oral communications, and the context of an electronic communication is important.
- For example, if a series of emails and texts among lawyers and their clients takes the character of an active discussion among parties within a room, the “conversation” may not be different from a face-to-face conversation in which the lawyers are able to adequately protect the interests of their clients.



What About the Type of Dispute?

- It is common in some transactional fields of law for both lawyers and clients to routinely cc other lawyers and clients in certain communications related to a transaction, for example circulating revised documents among a transaction team comprised of multiple parties and their lawyers.
 - Absent other circumstances, Lawyer B can rely on that past course of conduct among the lawyers and others involved in a transaction.
- Lawyers in adversarial matters should always avoid communicating with other lawyers' clients without express permission. Because of the contentious nature of adversarial proceedings, there is a greater risk that such communications could interfere with other lawyers' relationships with their clients and serve to harm those clients' interests.



Conflicts of Interest

Where conflicts can arise in SPED cases

No Place Like Home

Aunt Em retains Attorney Henry to represent her and her niece Dorothy, who has a learning disability. Aunt Em wants Dorothy to pursue a particular IEP placement that is less restrictive and more cost-effective for the District. Dorothy strongly disagrees and wants to attend a specialized residential program far from home in the Emerald City.

Henry learns that Aunt Em and Dorothy have conflicting education goals. Aunt Em demands he follow her strategy, while Dorothy wants to pursue the residential program.

Ethical issues?



Made using OpenAI (2025).



What is the Concurrent Conflict?

- [RPC 1.7](#)
 - (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).



Does RPC 1.14 Apply?

- [RPC 1.14](#)

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.



Does RPC 1.14 Apply?

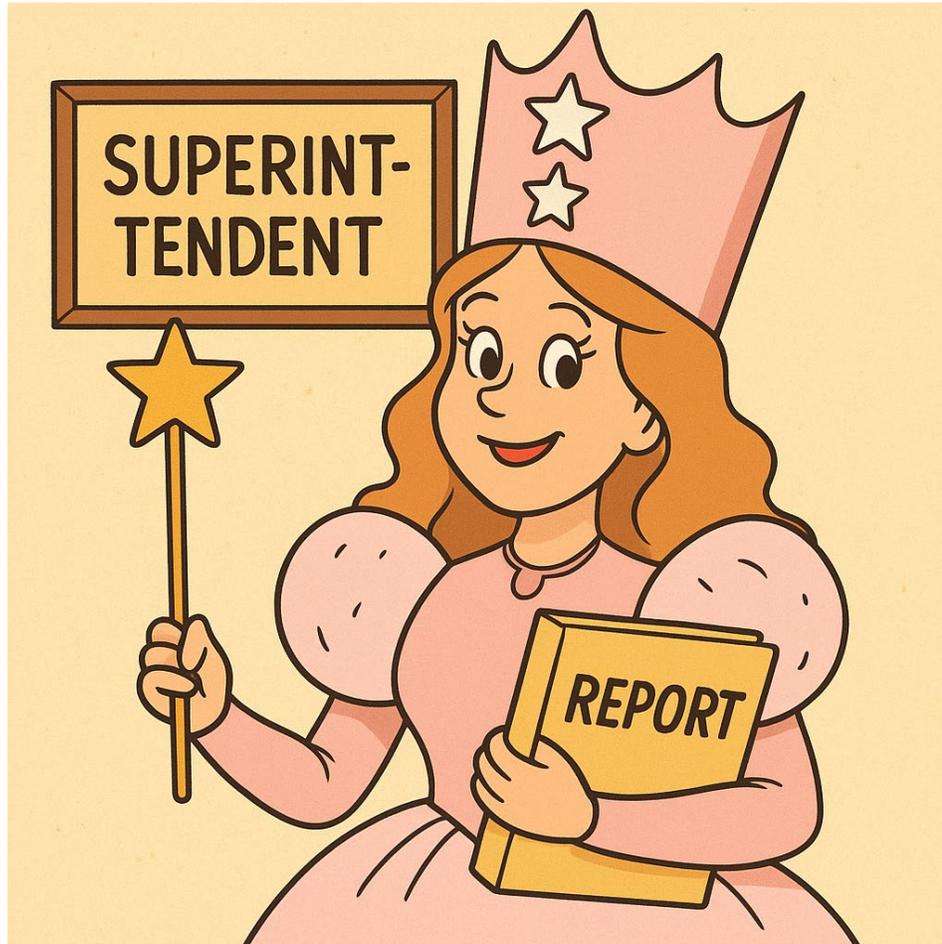
- [Comment 1](#)
 - The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters.
 - When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. . .
 - Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.



How Can Henry Avoid a Conflict of Interest?

- Clarify who the client is.
 - Aunt Em?
 - Dorothy?
 - Family as a unit?
- Avoid dual representation.
 - Identify the conflict: Aunt Em and Dorothy have opposing educational goals.
 - Determine if the conflict is waivable:
 - If yes, obtain informed written consent from both.
 - If no, withdraw from representing one or both clients.
- If Henry represents Dorothy as the primary client, treat Dorothy's relationship as normal unless there is some form of diminished capacity.

Munchkinland Mix-Up



Made using OpenAI (2025).

Now, Attorney Henry is representing the Munchkinland School District. Superintendent Glinda is accused of violating district policies and possibly mismanaging funds. The school board asks Henry to investigate and advise on disciplinary measures.

At the same time, Superintendent Glinda contacts Henry privately, seeking legal advice and requesting confidentiality about the allegations.

Ethical issues?



Organization as a Client

- [RPC 1.13](#)

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- (f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
- (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7.
 - If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.



Organization as a Client

- [RPC 1.13, Comment 10](#)

- There are times when the organization's interest may be or become adverse to those of one or more of its constituents.
- In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation.
- Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.



What if a Conflict of Interest Arises?

- [RPC 1.7, Comment 4](#)
 - If a conflict arises after representation has been undertaken, the lawyer ordinarily **must withdraw** from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16.
- [Comment 6](#)
 - Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.
 - The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively.



What Should Henry do?

- Henry must communicate who the client is.
 - He represents the District and not Superintendent Glinda individually.
- Henry knows or reasonably should know that Glinda's interests are adverse to the District.
 - He cannot give Glinda legal advice, except to tell her to obtain her own counsel.
- Henry does not have to withdraw just because Superintendent Glinda approached him for advice, so long as he:
 - Makes it clear that he cannot and does not represent her,
 - Does not give Glinda legal advice,
 - And does not receive confidential information under a mistaken belief of representation.

Not in Kansas Anymore

Suppose Attorney Henry represented Aunt Em and Dorothy 10 months before he began representing the Munchkinland School District. Now, Aunt Em is filing a due process claim against the District. The District has asked Henry to defend its position and to cross-examine Dorothy.

Henry recognizes that some of Dorothy's past disclosures and private details could assist the District in challenging the credibility of her current placement request.

Ethical issues?



Made using OpenAI (2025).



Duties to Former Clients

- [RPC 1.9](#)

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the **same or a substantially related matter** in which that person's interests are **materially adverse** to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
 - (1) whose interests are materially adverse to that person; and
 - (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; *unless the former client gives informed consent, confirmed in writing.*



Duties to Former Clients

- [RPC 1.9](#)

- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.



Imputation of Conflicts of Interest

- [RPC 1.10](#)

- (a) except as provided in paragraph (e), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
- ... (1) the personally disqualified lawyer is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;



What Can Henry Do?

- Henry should disclose his conflict of interest to the District.
- He cannot represent the District in this matter.
 - He previously represented Dorothy and Aunt Em.
 - The due process matter is substantially related to that representation.
 - The District's position is materially adverse to Dorothy and Aunt Em.
 - He has no written consent from Aunt Em or Dorothy.
- Henry cannot use confidential information to the disadvantage of a former client.



Is Henry Required to Withdraw?

- Henry must withdraw from representing the District in this matter, unless informed consent from the district and superintendent is obtained.
 - What if Henry doesn't withdraw?
- If Attorney Henry doesn't withdraw, he risks:
 - Bar complaint or discipline.
 - Loss of client trust.
 - Breach of confidentiality.
- Call the WSBA Ethics Line! **(206) 727-8284**



What If the Situation Were Reversed?

- RPC 1.9
 - (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- RPC 1.11
 - (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:
 - (1) is subject to Rule 1.9(c); and
 - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.



How One Court Handled It

- *Elaine Braxton, as natural parent and Guardian on behalf of D.N v. Clark County School District, et al., 2:23-cv-00144-JAD-MDC, (U.S. District Court, Nevada), June 6, 2024.*
 - "A narrow conflict exists regarding plaintiffs' IDEA and Section 504 claims because Ms. Miller had an attorney-client relationship with CCSD, against whom she is now adverse, and her 12/31/20 Memo was substantially related the IDEA and Section 504 matters at issue in this action."
 - "The Court also agrees that screening Ms. Miller is the appropriate remedy. Ms. Miller has no substantive involvement in the matter and was promptly screened after the conflict issue was raised (following Ms. Miller's discussions with defendants about scheduling depositions). Disqualification of all H&P Law attorneys from this matter is not appropriate or necessary. Indeed, disqualification of counsel is a drastic measure, that is subject to high judicial scrutiny."



Confidentiality

New advisory opinion and its application to special education



Confidentiality in SPED contexts

- Family Educational Rights and Protections Act (FERPA)
 - Protects the privacy of student education records and requires schools to obtain written parental consent before disclosing personally identifiable information.
- Individuals with Disabilities Education Act (IDEA) Confidentiality Rules
 - In addition to the FERPA requirements, IDEA protects the information of students with disabilities, requiring schools to actively protect and manage access to special education records and data.
- Attorney confidentiality/privilege.



Washington 2025 Advisory Opinion

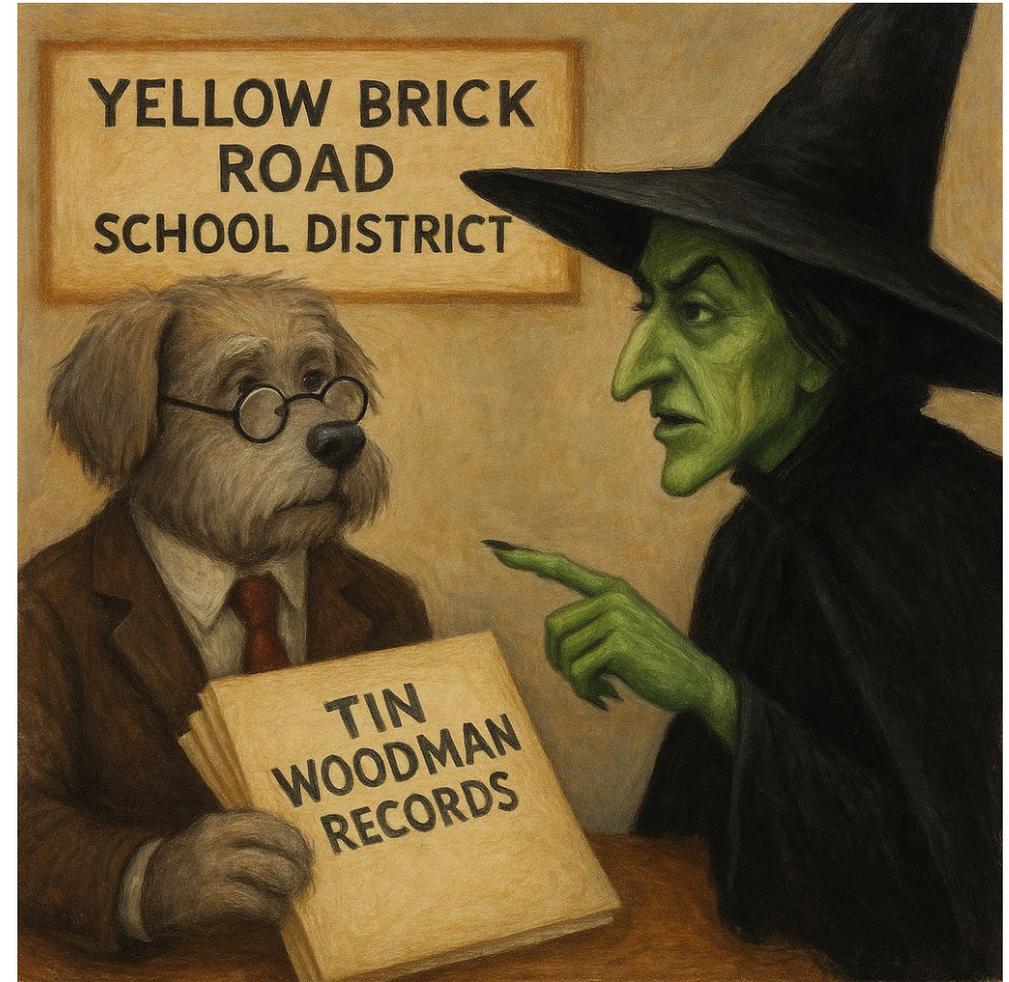
- *Certified Guardianship Confidentiality and Conflict Issues, Washington State Bar Association, Op. 202501 (2025).*
- Essentially, this advisory opinion addresses whether a lawyer for a long-term care facility can ethically:
 - Disclose a resident's private information to a proposed guardian or a conservator before they are appointed; and
 - Simultaneously represent the facility and the appointed guardian or conservator.
- The opinion concluded that:
 - Dual representation is ethically fraught and rarely permissible because guardians owe broad fiduciary duties to the resident, which could conflict with the facility's interests, and are often not waivable, especially if issues about resident care or institutional practices arise.

The Guardianship of Oz

Attorney Toto represents the Yellow Brick Road School District. Student Tin Woodman is an 18-year-old student with significant cognitive disabilities. The Wicked Witch of the East has a petition pending in County Superior Court to become Tin's legal guardian.

While the guardianship is pending, the Wicked Witch requests Tin's complete records from Toto to prepare for her role. After the appointment, she asks Toto to continue advising her in IEP meetings and legal strategy, with the District supporting his involvement.

Ethical issues?



Made using OpenAI (2025).



Advisory Opinion

- Confidentiality:
 - A lawyer must not disclose client (or protected party) information unless permitted by law or consented to.
 - A proposed guardian has no legal authority over the individual until formally appointed by the court.
- Conflict of Interest:
 - Representing the institution (e.g., care facility) and the guardian creates conflicts of interest that are usually not waivable.
 - Guardians have fiduciary duties to the individual, which can easily conflict with the institution's goals.



Attorney Toto's Ethical Duties

- Tin Woodman's records are confidential under FERPA and Rule 1.6.
 - While the guardianship is pending, no records can be shared unless consent is obtained.
- After guardianship is granted, Toto may not represent both the District and the Wicked Witch.
 - Their interests may diverge, especially if she challenges IEP decisions.
- Bottom line: Toto must represent the District only.



Safeguarding Property

Current trend of Bar Association violations



Monkey Business in the Trust Account

- In *Matter of Rosenberg*, 2013 NY Slip Op 05597, 109 AD3d 225, October 2, 2013, (Slip Opinion), an education attorney in New York was audited after a few checks bounced from his trust account.
 - The attorney specifically practiced special education law, working with parents of children with special educational needs who sought tuition and/or tuition reimbursement from government entities such as the New York City Department of Education.

Monkey Business in the Trust Account

- In *Matter of Rosenberg*, 2013 NY Slip Op 05597, 109 AD3d 225, October 2, 2013, (Slip Opinion), an education attorney in New York was audited after a few checks bounced from his trust account.
 - The audit revealed that the attorney had over-disbursed funds to himself and his clients, causing trust account shortfalls. To cover these shortfalls, he deposited his personal funds into the account, which was improper commingling.
 - The bar committee did not find his violation of venal intent but found it to be negligence. He received a public censure due to his remorseful corrective action and ongoing pro bono service.



Safeguarding Property

- [RPC 1.15](#)

- (a) This rule applies to... property of clients or third persons in a lawyer's possession in connection with a representation.
- (b) A lawyer must not use, convert, borrow, or pledge client or third person property for the lawyer's own use.
- (c) A lawyer must hold property of clients and third persons separate from the lawyer's own property.
 - (c)(3) A lawyer must identify, label, and appropriately safeguard any property of clients or third persons other than funds. The lawyer must keep records of such property that identify the property, the client or third person, the date of receipt, and the location of safekeeping.

- [Comment 1](#)

- A lawyer should hold property of others with the care required of a professional fiduciary.

Disciplinary Trend in Washington



- In the last year, at least 18 Washington attorneys have been disciplined via disbarment or suspension for violating 1.15.
- In the last 10 years, 172 Washington attorneys have been disciplined for violating 1.15.



Safeguarding Property Reminders

- Hold property separately.
- Use designated trust account (IOLTA).
 - Always verify that the funds clear the IOLTA account before dispersing funds to clients.
- Maintain complete records of the accounts.
- Keep property safe.
- Promptly notify the client after receiving funds on their behalf.
 - Ex: settlement funds.
- Deliver such funds to the rightful owner.



Follow the Yellow-Brick Road...

- Know who your client is.
- Clarify roles clearly: avoid dual representation.
- Supervise AI and new technology use.
- Protect confidentiality – especially student records.
- Handle client funds with care.
- When in doubt, call the WSBA Ethics Hotline: (206) 727-8284.

What concerns or questions do you have?

