

## The Massachusetts Appeals Court Upholds The Dismissal Of A Complex Legal Malpractice Conflict of Interest Claim

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### By Peabody & Arnold on February 14, 2019

On February 5, 2019, Attorneys Michael J. Stone and William R. Covino obtained a favorable decision from the Appeals Court affirming the early dismissal of a legal malpractice claim on a motion to dismiss. The complaint alleged that an attorney who drafted an easement agreement in 1996, in anticipation of the subdivision of two lots, engaged an impermissible conflict of interest fourteen years later when he represented the owner of one of the two subdivided lots at a public hearing over its development to the detriment of the owner of the other subdivided lot.

In affirming the dismissal of the legal malpractice claim, the Appeals Court agreed that the mere fact that an attorney takes on a new client whose interests are adverse to a former client does not, without more, create an actionable conflict of interest. To make out such a claim under Mass .R. Prof. C. 1.9, a plaintiff must show that the attorney's representation of the new client involved the same or a substantially related matter in which the new client's interests were materially adverse to the interests of the former client or that the attorney misused confidential information in the subsequent matter that had been obtained through the prior representation. After a thorough review of the allegations at issue, the Appeals Court agreed that no actionable conflict of interest claim could exist because the attorney did not represent the Plaintiff when he drafted the easement agreement at issue. The Plaintiff did not own the lot at the time the easement agreement was drafted and her later acquisition of an interest in the easement agreement did not allow her to step into the shoes of the prior owner for purposes of bringing a legal malpractice claim. Moreover, the Plaintiff's allegation that the attorney had helped her negotiate renovations for her lot in 2000 and vague references to disclosing confidential information to him were insufficient to survive a motion to dismiss.

The entire decision may be found at [Janes v. Anctil](#), Mass. App. Ct., No. 18-P-6, 2019 WL 438563 (Feb. 5, 2019).