

“The issue in effectiveness cases is not a lawyer’s culpability, but rather his client’s constitutional rights.” *US v. DeCoster*, 487 F.2d 1197, 1202 n.21 (DC Cir. 1973)

Ethical obligations to the client:

Loyalty
Competent representation
Confidentiality
Diligence

Duty of LOYALTY to a former client includes obligation to disclose and even volunteer things that are not in the record so that collateral counsel can be effective. Cooperation should be full, open and without reservation.

Duty of CONFIDENTIALITY to a former client necessarily involves an analysis of how much information should be disclosed and to whom.

Duty of DILIGENCE to a former client includes the concept of zealousness formerly contained explicitly in the rules.

What are BEST PRACTICES for cooperation with new counsel?

- Produce the files (the file belongs to the client, not the lawyer)
- Volunteer information *not* contained in the files - *what was not done* in the defense of the client’s case, what was not in the record, what was not investigated, examined, researched, considered or asked and *counsel’s strategic thinking*
- Direct the new lawyer to areas of inquiry, including shortcomings in representation that the trial counsel now sees