

DIGEST OF ETHICS ADVISORY PANEL
OPINION #90-6, REQUEST #77
Issued January 18, 1990

An attorney seeks Panel advice as to whether he may properly represent a certain individual.

The attorney advises the Panel that he was part of Lawyer L's firm for approximately 15 months beginning in early 1983. The attorney states that during this time he and Lawyer L represented an individual who we shall call Mr. A. The attorney states that after he left Lawyer L's firm he served as co-counsel with Lawyer L on several cases commenced during his association with the firm, but that he had no access to Lawyer L's offices. The attorney further advises the Panel that Lawyer L inadvertently failed to remove his name from his advertisement in the yellow pages of the telephone book when his association with Lawyer L ended.

The attorney states that Mr. A recently sought his services to represent him against an individual we shall call Ms. B. The attorney indicates that in pursuing some routine matters in the court records he uncovered the fact that Ms. B had retained his former associate, Lawyer L, some four or five years after his own association with Lawyer L came to an end.

Rule 1.9, entitled "Conflict of Interest: Former Client" addresses the effect of a past attorney-client relationship on the attorney's subsequent representation of an adverse interest. Since the attorney was not associated with Lawyer L when Ms. B retained Lawyer L's services, Ms. B never became the attorney's client and the provisions of Rule 1.9 thus are not activated. The Panel takes the position that the attorney may properly represent Mr. A in his suit against Ms. B.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.