

Digest of Ethics Advisory Panel  
Opinion #91-10, Request #148  
Issued May 23, 1991

An attorney seeks Panel advice as to whether the attorney may properly testify concerning statements made to the attorney by a former client. The attorney informs the Panel that these statements relate to a dispute between the former client and a relative of the attorney. The attorney states that the conversation with the former client did not arise from the attorney-client relationship and did not relate in any way whatsoever to any matter the attorney may have been handling at the time for the former client. The attorney indicates that he/she is not acting as the attorney for the relative in this proceeding.

The Panel is of the opinion that the circumstances described are governed by Rhode Island Rule of Professional Conduct 1.9, entitled "Conflict of Interest: Former Client," which provides:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) 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 consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

The Panel takes the position that the attorney may properly testify concerning the statements made to the attorney by the former client as long as these statements do not arise from the attorney-client relationship.

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.