

Digest of Ethics Advisory Panel
Opinion #91-33, Request #154
Issued May 23, 1991

An attorney seeks Panel advice as to whether a conflict of interest arises under circumstances in which a former client may be called upon to testify in a criminal proceeding against a present client. The attorney advises the Panel that he/she represents client A in a pending civil matter. The attorney indicates that he/she represented client B in an unrelated criminal matter. The attorney believes there is a possibility that client B may be called upon to testify against client A in a future criminal proceeding.

The Panel takes the position that this inquiry is governed by Rhode Island Rule of Professional Conduct 1.9, entitled "Conflict of Interest; former Client,"

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 is of the opinion that these circumstances do not give rise to a conflict of interest because the reasons for which the attorney was engaged by client A and client B are so unconnected that they do not amount to the same or a related matter.

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.