

ETHICS ADVISORY PANEL
Opinion #92-31, Request #245
Issued July 23, 1992

An attorney seeks Panel advice as to whether the attorney may represent a client in the following circumstances. The attorney was retained by Client A, a public employee, to represent Client A in connection with an administrative hearing involving complaints by client A's subordinates. Soon thereafter, the attorney was contacted by a former client, a subordinate of Client A who expected to be a potential adverse witness in the administrative hearing. The former client contends that the attorney's representation of Client A is substantially related to the attorney's representation of the former client. The former client objects to the attorney's continued representation of Client A. The attorney believes that the two representations are not substantially related.

The Panel has before it conflicting representations of fact which it is not in a position to resolve. The Panel directs the attorney's attention to Rule 1.9 of the Rhode Island Rules of Professional Conduct which governs Conflicts of Interest with Former Clients. If the matters are not substantially related then Rule 1.9(b) controls this inquiry. That rule states that "a lawyer who has formerly represented a client in a matter shall not thereafter: 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."

If the matters are substantially related then Rule 1.9(a) states that a lawyer . . . "shall not thereafter 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."