

ETHICS ADVISORY PANEL
OPINION #92-39, Request #259
Issued July 23, 1992

An attorney seeks Panel advice regarding the applicability of Rule 1.11 to certain facts. The inquiring attorney was employed as an investigator by Agency A, a public agency. While the inquiring attorney was so employed, Agency A, together with Agencies B, C, D, became defendants in a lawsuit. Agency A assigned the inquiring attorney to investigate the allegations in the lawsuit, and the attorney acquired personal knowledge regarding the case in the course of his/her employment at Agency A. The attorney represents that some of the issues in the lawsuit were resolved. In partial settlement of the suit, plaintiffs and Agency B drafted a consent decree, which was ultimately approved by the court. The claims against Agency A have not been resolved.

Having left his/her employment at Agency A, the inquiring attorney is now employed at Agency X, as an attorney. Agency X represents the private plaintiffs in the lawsuit against Agencies A, B, C, and D. In his/her role at Agency X, the inquiring attorney now wishes to represent the plaintiffs in an effort to enforce the consent decree between the plaintiffs and Agency B.

The attorney points out that he/she served as an investigator for Agency A and did not have an attorney-client relationship with Agency A during the course of the litigation that forms the basis of this inquiry. Nevertheless, the attorney now wishes to represent the parties who were adverse to his/her former employer, in a matter that is substantially related to the attorney's former employment. Rule 1.11(a) contains a broad prohibition that bars former government officials from representing clients in matters that are related to their government service:

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyers participated as a public officer or employee. Rule 1.11(a).

The comments to Rule 1.11 explain that this rule was designed to "[prevent] a lawyer from exploiting public office for the advantage of a private client." *Id.*, comment, para. 1. Thus, the Panel is of the opinion that this rule plainly prohibits the inquiring attorney from representing a private client where, as in this case, that representation involves "a matter in which the lawyer participated as a public official."

The Panel also advises that if attorneys associated with the inquiring attorney undertake representation of the plaintiffs, they must comply with the screening and notice requirements of Rule 1.11(a)(1) and (2).