

ETHICS ADVISORY PANEL  
Opinion 92-51, Request #274  
Issued August 12, 1992

An attorney seeks Panel advice regarding whether a conflict of interest exists in the following situation. While the attorney was employed in another law firm, the attorney drafted a mortgage assumption agreement for a client-bank. The attorney is presently employed in another firm. The potential client seeks to employ the attorney for a bankruptcy filing who assumed the mortgage pursuant to the same mortgage assumption agreement that the attorney drafted. The client is the individual for whom the mortgage assumption agreement was drafted.

It appears from the facts provided that a conflict of interest exists pursuant to Rule 1.9 "Conflict of Interest: Former Client" and the comments thereto.

Rule 1.9 specifically mandates that:

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 . . .

The comments to Rule 1.9 state that "after termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this Rule . . . . Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client." According to Rule 1.9, the propriety of subsequent adverse representation turns on whether the former and present representation are substantially related. The Panel believes that the matters are substantially related and therefore a conflict of interest does exist.