

ETHICS ADVISORY PANEL  
Opinion #92-68, Request #295  
Issued September 16, 1992

An attorney seeks Panel advice regarding the ethical propriety of continuing to represent a client in the following situation. The attorney's client, A, is a broker who has been engaged to find a buyer for B's business. The attorney's law firm had several years previously represented B in the incorporation of B's business but had not maintained a continuing client relationship with B. However, after B had engaged A as a broker, the attorney prepared a lease for B in connection with a potential sale of B's business that was not completed.

A has presented to B an offer from another potential buyer, to which B has declined to respond. A claims that A has earned its broker's commission and desires that the attorney represent A in collecting that fee from B. The attorney asks whether the attorney may represent A against B.

The Panel believes that Rule 1.9 "Conflict of Interest Former Client" governs this inquiry. The Rule states 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 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.

In this situation, the attorney represented B, the seller, in connection with the incorporation of the business which is the subject of the agreement between A and B. More recently, the attorney also provided legal services to B while simultaneously representing A in a matter that may be substantially related to A's claim for a commission.

As indicated by the Comments to Rule 1.9, whether these matters are "substantially related" may depend upon the facts of the particular transaction or situation and may be a matter of degree. The Panel cannot conclude from the facts furnished in the inquiry that the matters covered by the attorney's former representation of B are not "substantially related" to the fee dispute. If the matters are substantially related, the attorney may not represent A without the consent of B after consultation.