

(0009J)

ETHICS ADVISORY PANEL
Opinion #92-76, Request #304
Issued September 16, 1992

An attorney seeks Panel advice as to whether a conflict of interest may exist. The attorney represents a few lending institutions for real estate matters. The attorney serves as lender's counsel for loan closings and title work and counsel for a borrower who was purchasing property and obtaining a mortgage loan. The seller of the property, which is the same property that the borrower purchased, would like to engage the inquiring attorney's law firm for various legal matters. In addition, quite recently the seller has been the subject of an assault and battery by the borrower.

The Panel believes that this inquiry is governed by Rule 1.9(a) and (b). 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.

The Panel believes that the attorney may represent the seller in a civil suit against the borrower because the matters are not substantially related. Moreover, the attorney may not use information relating to the representation of the borrower to the disadvantage of the borrower.