

(0009J)

ETHICS ADVISORY PANEL  
Opinion #92-77, Request #305  
Issued November 18, 1992

An attorney seeks Panel advice regarding the ethical propriety of continuing to represent a client in the following circumstances. The attorney represented a wife in a divorce proceeding. The attorney filed the necessary pleading with the Court. Subsequently, the wife decided not to pursue the divorce. In the interim, the attorney's office represented the wife and husband in a few real estate transactions. The inquiring attorney informs the Panel that the law office interacted only with the wife. The wife would like to pursue the divorce against her husband again and seeks representation from the inquiring attorney. The attorney asks whether the attorney may represent the wife in the divorce.

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.

The Panel is unable to determine whether or not the matters are substantially related from the facts given. Assuming that the matters are substantially related, then the inquiring attorney should obtain the husband's consent, preferably in writing, and should not rely on the wife's statement that the husband has consented to the representation in the divorce proceeding.

As indicated by the comments to Rule 1.9, information acquired by the attorney in the course of the representation of a client may not be subsequently used by the lawyer to the disadvantage of the husband, unless such use is permitted by an express exception in Rule 1.9(b). In this matter, the attorney may represent the wife in the divorce proceedings as long as the attorney receives informed consent after consultation by the husband and that the attorney does not use information gained from the prior representation to the disadvantage of the husband.