

ETHICS ADVISORY PANEL
Opinion #93-36, Request #370
Issued June 2, 1993

The attorney was retained by Client B in a legal matter against Former Client A. The attorney previously advised Client A regarding the provisions of a promissory note while an associate in a former law office. The attorney performed no other work for Client A. The law firm incorporated Client A's business previous to the inquiring attorney's employment with the law firm. The inquiring attorney's representation of Client B regards a debt collection matter against Client A, and is not related to the promissory note or incorporation of Client A. The attorney is concerned with Rule 1.9 "conflict of Interest: Former Client".

Rule 1.9 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.

If the matters are not the same or "substantially related" and if the attorney does not use information relating to the representation to the disadvantage of the former client, the representation of Client B against Client A should not create a conflict of interest. If however, the matters are "substantially related" or will use information that is materially adverse to the former client, Client A, then in that case the attorney may not represent Client B.