

ETHICS ADVISORY PANEL
Opinion #93-47, Request #380
Issued July 28, 1993

The inquiring attorney, Attorney A, was a member law firm A, B, and C for a period during which Attorney B represented client X for a negotiation of a lease. Attorney A and C did not represent Client X in this matter, did not discuss the matter with Attorney B or the client and did not have actual imputed knowledge of the representation. Subsequently, law firm A, B and C dissolved. Attorney B continued to represent Client X in other matters. Attorney A represents Client Y who would like to negotiate a lease for the premises leased by Client X. Client X, through his/her attorney, requested that Attorney A withdraw from representing Client Y because Attorney A was a member of the same law firm when Attorney B represented Client X.

The Panel opines that when a law firm dissolution occurs, Rule 1.10 entitled "Imputed Disqualification: General Rule" is applicable. The Rule states that:

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

The comments to the Rule caution attorneys when a break up in a law firm occurs.

First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several

(0634)

(FINAL #93-47)

times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity to lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Based upon the facts as presented to this Panel, the inquiring attorney does not have to withdraw from representing Client Y as long as the matters are not substantially related and the attorney does not have knowledge of information protected by Rules 1.6 and 1.9(b).