

ETHICS ADVISORY PANEL
OPINION #93-77 REQUEST #418
Issued October 5, 1993

The inquiring attorney represents a defendant in a personal injury lawsuit. Doctor X is the plaintiff's treating physician and may testify on plaintiff's behalf at trial. The inquiring attorney previously represented Doctor X in a medical malpractice lawsuit. The inquiring attorney asks whether the representation of the defendant presents a conflict of interest.

Under these facts, Doctor X is a former client of the inquiring attorney. Rule 1.9 outlines a lawyer's ethical obligations in this situation. The Rule provides as follows:

A lawyer who has formerly represented a client in 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.

Based on the facts as presented, the Panel concludes that the inquiring attorney may represent the defendant in conformity with Rule 1.9. The matters of representation are not the same or substantially related and the interests of the defendant are not materially adverse to the interests of Doctor X. The inquiring attorney is, however, obligated to conform with the confidentiality principles of Rule 1.6 and may not use information that was obtained in the former representation to the disadvantage of Doctor X.