

(0646)
(FINAL)

ETHICS ADVISORY PANEL
OPINION #93-87 REQUEST #430
Issued October 19, 1993

The inquiring attorney represented an institution several years ago in various matters. The inquiring attorney now seeks to represent a client in an action against the institution. The subject of the proposed representation is unrelated to the matters in which he/she represented the institution previously. The inquiring attorney asks whether representation of the client presents a conflict of interest.

Rule 1.9 entitled "Conflict of Interest: Former Client" provides as follows: 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.

Under the Rule 1.9, the propriety of subsequent adverse representation depends upon whether the former and the present matters are substantially related.

The Panel believes that under these facts, a substantial relationship does not exist between the past representation of the institution and the proposed representation of the client. Thus, the Panel concludes that the inquiring attorney may undertake the representation. However, the Panel notes that under subsection (b) of the Rule, information obtained during the former representation may not be used to the disadvantage of the former client.