

ETHICS ADVISORY PANEL
OPINION #93-97 REQUEST #442
Issued December 8, 1993

The inquiring attorney represented a mother in a domestic matter that has concluded. The mother presently owes the inquiring attorney money for legal services rendered. The inquiring attorney represents a criminal defendant charged with assault upon the daughter of the mother. The inquiring attorney asserts that "the substance of the present matter and [the] representation of the criminal defendant in no way relates to the substance of the matters handled for the mother... in the prior matter." The inquiring attorney asks whether his/her continued representation of the criminal defendant presents a conflict of interest based on his/her prior representation of the mother who has an outstanding bill with the inquiring attorney's office.

At the outset, the Panel notes that the fact that the mother has an outstanding bill with the inquiring attorney's office is irrelevant to the Panel's conflict of interest analysis pursuant to the Rules of Professional Conduct.

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 interest 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 of 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 criminal 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 mother. The inquiring attorney is, however, obligated to comply with the confidentiality principles of Rule 1.6 and may not use information that was obtained in the former representation to the disadvantage of the former client.