

ETHICS ADVISORY PANEL  
OPINION #94-7 REQUEST #459  
Issued February 23, 1994

The inquiring attorney represented a client several years ago in a personal injury matter. Subsequently, the client and the inquiring attorney were involved in an automobile collision. The client has filed a lawsuit against the inquiring attorney alleging that he/she sustained injuries. The client's injuries in the present lawsuit are similar to the client's injuries in the former lawsuit. The inquiring attorney asks what confidentiality restraints exist with respect to information obtained by the inquiring attorney in the former representation of the client.

The issue raised by this inquiry is addressed by Rule 1.9 entitled "Conflict of Interest: Former Client." That Rule provides as follows:

Rule 1.9. Conflict of Interest: Former Client.-- 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.

While the Rule addresses restrictions upon a lawyer's representation of another person whose interests are adverse to a former client, it also prohibits a lawyer's use of information relating to the representation to the disadvantage of the former client.

The Panel concludes that the inquiring attorney may not reveal information that was obtained in the former representation to the disadvantage of the client unless such information has become generally known and/or is a matter of public record.