

ETHICS ADVISORY PANEL
OPINION #94-10 REQUEST #463
Issued February 23, 1994

Several years ago the inquiring attorney prepared a will for Y. Contemporaneously, the inquiring attorney prepared a trust for X, Y's spouse, in which Y is the life tenant. Upon X's death, the trust company administering the trust retained the inquiring attorney to represent it in connection with the probate of X's estate. After X's death Y was represented by another attorney and was not represented by the inquiring attorney. Y and Z, a remainderperson under the trust, have brought an action against the trust company alleging that it failed to properly invest the trust funds resulting in lost appreciation in market value and also potentially lower present income for Y. The inquiring attorney seeks Panel advice as to whether he/she may represent the trust company in the action brought by Y and Z. The inquiring attorney contends he/she at no time discussed with X, Y or Z investment matters relating to the trust.

Rule 1.9 entitled "Conflict of Interest: Former Client" 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 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.

The former matter of preparing Y's will that the inquiring attorney handled for Y is not the same or substantially related to the matter brought by Y and Z against the trust company. The inquiring attorney may therefore represent the trust company in the action. However, pursuant to Rule 1.9(b), the inquiring attorney may not use information relating to the representation to the disadvantage of Y, except as Rule 1.6 or Rule 3.3 would allow or require, or when the information has become generally known.