

ETHICS ADVISORY PANEL
OPINION #94-16 REQUEST #470
Issued March 23, 1994

The inquiring attorney represents Client A, a subcontractor, who at the request of a general contractor, B, built two chimneys for C's home. As problems arose, Client A spoke directly with C because B was not available. On one occasion, Client A brought C to the inquiring attorney's law office to discuss construction problems. On another occasion, C met with the inquiring attorney without Client A. After C moved into the home, the inquiring attorney pursued a collection matter for Client A against C for an outstanding bill. Client A was cross claimed into a Superior Court action with B brought by C against B. The inquiring attorney asks whether a conflict exists in his/her representation of Client A due to the previous interactions with C.

The Panel opines that Rule 1.9(a) governs this inquiry. The Rule states that:

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;

Based on the facts as presented, the Panel concludes that the inquiring attorney may represent Client A if Rule 1.9(a) is followed. Since the matters of representation are the same or substantially related and the interests of Client A are or maybe materially adverse to C, the inquiring attorney must obtain consent from C. The inquiring attorney is also 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, C. See, Rule 1.9(b).