

ETHICS ADVISORY PANEL
OPINION #94-69 REQUEST #540
Issued September 28, 1994

An attorney currently represents a client who is criminally charged with breaking into the attorney's former client's home. The attorney represented the former client approximately 10-12 years ago for a closing and five years ago in a civil suit. The attorney has had no contact with the former client in the last five years. The inquiring attorney informed the current client of his prior representation of the complaining witness and he/she consents to his/her continued representation. The inquiring attorney asks if Rule 1.9, "Conflict of Interest: Former Client" prohibits him/her from representing the client in the breaking and entering charge.

Rule 1.9, "Conflict of Interest: Former Client" states the following: 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.

The Panel does not believe that representing the client for a criminal matter is the same or substantially related matter in which that person's interests are materially adverse to the interests of the former clients. Therefore, the inquiring attorney may represent the criminal defendant without violating Rule 1.9 so long as he/she does not use derivative information against his/her former client.