

ETHICS ADVISORY PANEL
OPINION #94-71 REQUEST #542
Issued November 15, 1994

The inquiring attorney represents a plaintiff in a civil matter. The suit was filed in 1991 and is currently on the control calendar. Recently, the defense attorney asked the inquiring attorney to withdraw because the inquiring attorney's former law firm had represented the defendant in other matters. The inquiring attorney states that although the former law firm did some work for the defendant, the inquiring attorney did not have any contact with the defendant and has never seen any files or acquired any information relating to the defendant. The inquiring attorney asks whether he/she may continue to represent the plaintiff.

The comments to Rule 1.10 entitled "Imputed Disqualification: General Rule" states the following:

When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations.

First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity to lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Rule 1.9 entitled "Conflict of Interest: Former Client" states:
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 inquiring attorney is not disqualified from representing the plaintiff under Rule 1.10 unless the inquiring attorney or any of his/her current partners and associates were precluded from representing the plaintiff under Rule 1.9 by virtue of their former firm's representation of the defendant while they were with their former firm. Rule 1.9 would not prohibit the inquiring attorney from representing the plaintiff because the matters are not substantially related to matters handled by the former firm and the attorney does not possess any information about the defendant. See also, Rhode Island Ethics Advisory Panel Opinion #94-74.