

ETHICS ADVISORY PANEL
OPINION #94-74 REQUEST #545
Issued November 15, 1994

The inquiring attorney and his/her law partners recently formed "New Firm" and left "Old Firm." Old Firm represented Client Y. While at Old Firm, some of the attorneys in New Firm represented Client Y in collection cases and maintained Y's corporate records. Client X, a new client, seeks to retain New Firm in a matter against Client Y. This new matter is unrelated to any matter previously handled by any of New Firm's attorneys for Client Y at Old Firm, and Client Y is not represented in this matter by Old Firm. New Firm's attorneys were not privy to any confidential attorney-client information relating to Client Y. The inquiring attorney seeks advice as to whether New Firm may represent Client X in this new matter against client Y.

Rule 1.9 entitled "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.

Rule 1.10 entitled "Imputed Disqualification: General Rule" states in pertinent part:

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.

The comments to Rule 1.10 state that paragraph 1.10(b) seeks to disqualify the firm "only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict."

Under the facts provided by the inquiring attorney, the matter involving Client X is not the same or substantially related to the matter in which Client Y was involved while the New Firm attorneys were associated with the Old Firm. New Firm's attorneys did not have actual knowledge of confidential information relating to Client Y. This being the case, New Firm may represent Client X in the new matter against Client Y. New Firm can not use any information relating to the past representation of Client Y to the disadvantage of Client Y.