

ETHICS ADVISORY PANEL
OPINION # 94-80, REQUEST # 554
Issued March 23, 1995

The inquiring attorney represents A in connection with a breach of contract action concerning a Lease and Option to Purchase certain property between A as Lessee and Owners as Lessor. After negotiations, the property was listed for sale and a purchaser, B, was obtained. The real estate broker retained the inquiring attorney's law partner on behalf of B to conduct a title examination and was asked by the real estate broker to draft the warranty deed, power of attorney, and various other legal documents for the Owner's signature in connection with the sale.

The inquiring attorney's law partner in correspondence counseled B on the closing documents pertaining to the sale of Owner's property. Return correspondence from B indicated that B regarded the law partner as his/her lawyer.

The Owner's legal counsel alleges that the inquiring attorney has a conflict of interest and believes that the inquiring attorney must withdraw from representing A. The inquiring attorney seeks advice regarding whether he/she may continue to represent A in the breach of contract action.

With respect to whether the inquiring attorney has a conflict of interest, Rule 1.9 entitled "Conflict of Interest: Former Client" applies. That Rule provides 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.

As part of this discussion, Rule 1.10 entitled "Imputed Disqualification" is applicable due to the attorneys practicing in the same law firm. Rule 1.10 states:

(a) While lawyers are associated in a firm, no one of them shall knowingly represent a client when anyone of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

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It appears from the inquiry that the inquiring attorney's law partner undertook to represent the Owner. As a result the inquiring attorney may not continue to represent A in this substantially related matter without the Owner's consent.