

ETHICS ADVISORY PANEL
OPINION # 95-20, REQUEST # 582
Issued March 23, 1995

The inquiring attorney having represented Husband in a divorce action ten (10) years ago, is representing Husband in another divorce. At a conference between Husband, Current Wife and Counsel, Current Wife advised the inquiring attorney that he/she had previously represented her in a divorce action. Upon review of her/his file, the inquiring attorney states that he/she did meet with Wife at the time but that an associate attended the divorce hearing. The Wife is currently objecting to the inquiring attorney's representation of Husband against her in this matter.

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 Panel believes that the former representation is the same or substantially related to the current representation. The inquiring attorney is privy to personal, financial and private information concerning both Husband and Wife in their prior separate divorces. Currently, the matters are substantially related whereby the Wife's interests are materially adverse to the Husband's interests. Rule 1.9 provides that absent the Wife's consent to the representation of Husband, the inquiring attorney may not continue to represent Husband in the divorce action against Wife.