

Final

ETHICS ADVISORY PANEL
OPINION # 95-42, REQUEST # 609
ISSUED - SEPTEMBER 14, 1995

The inquiring attorney represented a wife in a divorce action. After the commencement of the divorce, the wife's mother-in law filed a separate action against the wife and asked the inquiring attorney to represent her in that matter. The inquiring attorney then learned that his/her law partner had prepared a will for the mother-in-law thirteen years ago.

The inquiring attorney asks whether he/she may continue representing the wife in the suit against the mother-in-law.

Rule 1.9 entitled "Conflict of Interest: Former Client" is applicable to this inquiry. That Rule 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.

Rule 1.10 entitled "Imputed Disqualification" disqualifies all firm members from representing a client if one firm member has a conflict of interest with respect to that client.

In order to have a conflict of interest with a former client, the matters of the current client should be the "same or substantially related" to the former client's matter unless the former client consents.

In this case, the preparations of a will is not the same or substantially related to the mother-in-law's action against the wife. Under Rule 1.9 the inquiring attorney may continue to represent the wife against the mother-in-law without violating Rule 1.9 provided that he/she does not use information relating to the prior representation to the disadvantage of the former client.