

Final

ETHICS ADVISORY PANEL  
OPINION # 95-49, - REQUEST # 618  
ISSUED - OCTOBER 12, 1995

The inquiring attorney asks whether he/she has a conflict of interest in the following situation. In the past the inquiring attorney represented a husband and wife at real estate closings. The inquiring attorney now seeks to represent the husband in a divorce against the wife. The inquiring attorney states that one of his/her last conversations with the couple was by telephone in a three-way call. The call centered around a problem with the couples' bank and the inquiring attorney rendered the appropriate advice. At this point, the wife was very upset and mentioned a "racial" issue regarding the bank.

The inquiring attorney states that he/she prepared pleadings for the husband in the domestic matter to protect his interests because time was going to expire. The inquiring attorney asks if he/she must withdraw from representing the husband in this matter.

Rule 1.9 entitled "Conflict of Interest: Former Client" states in pertinent part:

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 wife is a former client of the inquiring attorney. Rule 1.9 states that a lawyer may not represent a client in a matter which is the same or substantially related to a matter handled for a former client if the interests of the current and former clients are adverse.

In this situation, the former representation was the conduct of real estate closings for both the husband and wife. If the inquiring attorney obtained any information from the former representation that would be helpful in the domestic relations matter, then it could be argued that the matters are the same or substantially related. If this is so, then the inquiring attorney would have to acquire the wife's consent after consultation. In any event, the inquiring attorney cannot use any information relating to the representation of the husband and wife to the wife's disadvantage in the domestic relations matter.