

Final

ETHICS ADVISORY PANEL
OPINION #95-50, REQUEST #621
ISSUED - OCTOBER 12, 1995

The inquiring attorney represents the plaintiffs against the defendant who allegedly caused extensive property damage to the plaintiffs' home while the plaintiffs were out of state. The inquiring attorney's law firm formerly represented defendant in misdemeanor and domestic cases. Another attorney in the same firm formerly represented defendant's father in business matters. The inquiring attorney informed both plaintiffs and defendant regarding the representation and both parties have consented to the representation. The inquiring attorney alleges that the matters are not substantially related therefore, he/she seeks to represent the plaintiffs.

The Rule pertinent to this inquiry is Rule 1.9 entitled "Conflict of Interest: Former Client" which 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 interest 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.

In the situation described above, the defendant is the former client who was represented in both misdemeanor and domestic matters by the inquiring attorney's law firm. If the inquiring attorney reasonably believes that the matters are not the same or substantially related to either client, then the attorney may represent the plaintiffs against the defendant. The inquiring attorney must be mindful that he/she cannot use information relating to the representation of the former client to the disadvantage of that client.