

FINAL

**ETHICS ADVISORY PANEL
OPINION 95-58, - REQUEST # 635
ISSUED - DECEMBER 14, 1995**

FACTS:

The inquiring attorney met with Mrs. X regarding estate planning. Her husband also attended this meeting. The inquiring attorney recommended that Mrs. X should have a living will and Mr. X decided that the inquiring attorney should prepared a living will for him as well. Mrs. X received an entire "estate package" while Mr. X received a living will prepared by the inquiring attorney. Mrs. X recently contacted the inquiring attorney to amend her trust which would eliminate a gift to Mr. X's daughter by his first marriage and does not want him to know of this modification.

ISSUE PRESENTED:

The inquiring attorney asks whether he/she may represent Mrs. X in amending her estate planning with out violating Rule 1.9.

OPINION:

Yes

REASONING::

The Panel believes that the inquiring attorney's representation of Mrs. X in this matter would not propose a conflict of interest under Rule 1.9, which states in part:

Rule 1.9. "Conflict of Interest: Former Client." - 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 issue presented is whether or not the preparation of a living will for Mr. X is a same or substantially related matter in which Mrs. X's interests are materially adverse to Mr. X's interests. The amending of Mrs. X's estate is adverse to the beneficiary and not Mr. X therefore the inquiring attorney may represent Mrs. X in this matter without violating Rule 1.9.