

Final

ETHICS ADVISORY PANEL
OPINION 96-09 - REQUEST 657
ISSUED - May 16, 1996

Facts:

The inquiring attorney, while employed by Law Firm A, represented Client in salvage law suit claims. The inquiring attorney is now employed at Law Firm B which seeks to represent various defense insurance companies against Client. The Client, through counsel, seeks to disqualify the inquiring attorney from representing a defense insurance company against Client in a pending matter.

Issue Presented:

May the inquiring attorney represent defendant insurance companies against a former client in matters unrelated to the former representation?

Opinion:

Yes.

Reasoning:

The applicable Rule to this inquiry is Rule 1.9 entitled "Conflict of Interest: Former Client." Rule 1.9 entitled "Conflict of Interest: Former Client" addresses the situation when an attorney seeks to represent a client against a former client. Rule 1.9 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 crucial issue is whether or not the matters are the "same or substantially related." The comments to that rule propose that the matters addressed in subsection (a) depend upon the facts of a particular case.

When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. . . . a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. (See, Comments to Rule 1.9.)

Under the current set of facts, the inquiring attorney would be representing clients against the former client but in matters not related to the former representation. Note however, Rule 1.9(b) states that a lawyer may not use information relating to the representation to the disadvantage of the former client. The inquiring attorney has a duty to preserve the former client's confidences under Rule 1.6.