

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
OPINION NO. 97-09, REQUEST NO. 709
Issued April 10, 1997**

Facts:

Marina A and Marina B are contiguous. Marina B is located on the south side of Marina A. Marina A objected to the placement of docks by Marina B in waters separating the two marinas. The inquiring attorney represented Marina A before a state agency on that matter which concluded about a year ago. The inquiring attorney was retained to represent Marina A for that matter only, and did not represent Marina A in any other matters. Recently, a long-standing client of the inquiring attorney made an agreement to purchase property on the north side of Marina A and proposes to construct a marina there. The client has retained the inquiring attorney to represent him/her before the state agency to obtain the necessary permits for the proposed marina. Marina A maintains a structure on the north side in an area which encroaches the riparian rights of the owners of the property to be sold, and Marina A objects to the proximity of the proposed pier to a claimed riparian line of Marina A. The north side of Marina A's property and its encroaching structure were not issues and were never discussed during the inquiring attorney's prior representation of Marina A. Opposing counsel charges a conflict of interest because the inquiring attorney acquired information during the representation of Marina A which could be adverse to it in the representation of the inquiring attorney's current client.

Issues Presented:

Are the disputes between Marina A and Marina B which were limited to the south side of Marina A substantially related to the disputes between Marina A and the inquiring attorney's current client which are limited to the north side of Marina A?

Opinion:

The matters are not substantially related, and the inquiring attorney may continue to represent his/her current client on the proposed marina.

Reasoning:

The Rule pertinent to this inquiry is Rule 1.9 which states:

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 crucial issue under Rule 1.9 is whether or not the matter in which an attorney represented a former client is "the same or substantially related" to the matter in which he/she represents or proposes to represent a current client. See R.I. Sup. Ct. Ethics Advisory Panel Op. 96-19 (1996). If the matters are not the same or substantially related, then representation of the current client is permitted without the consent of the former client. However, the attorney is prohibited from using information relating to the representation of the former client to the disadvantage of the former client. See Rule 1.9(b).

The scope of a "matter" for purposes of Rule 1.9(a) depends on the facts of a particular situation. See Comment to Rule 1.9. The disputes between Marina A and Marina B were limited to the placement of docks in waters along the south side of Marina A and are not substantially related to the disputes between Marina A and the inquiring attorney's current client regarding the proposed pier or the encroachment on the north side of Marina A. Therefore, the inquiring attorney may continue to represent his/her current client. Rule 1.9(b) adequately addresses opposing counsel's concern in that the inquiring attorney is prohibited from using information relating to the representation of Marina A to its disadvantage.