

ETHICS ADVISORY PANEL
Opinion #93-18, Request #348
Issued March 31, 1993

An attorney represented client A approximately three years ago in both a domestic and worker's compensation matter. Subsequently, client B retained the attorney to represent him in a sexual assault charge. The victim in this matter is client A. The attorney states that client A has not objected to this former representation. The attorney questions whether he/she can represent client B in the above described case.

Rule 1.9 entitled "Conflict of Interest: Former Client" is applicable to this inquiry. The Rule states that:

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 attorney has provided insufficient facts for a determination of whether the former representation of client A and current representation of client B are "substantially related." The attorney may not represent client B if the representation is a substantially related matter and client B's interests are materially adverse to client A's interests. In no event may the attorney use information gained through the representation of client A to the disadvantage of client A. If the former client chooses to waive the prohibition in Rule 1.9, the client must consent to the representation after consultation.