

ETHICS ADVISORY PANEL
Opinion #93-23, Request #356
Issued June 2, 1993

An attorney represents a corporation and its sole shareholder for both corporate and personal matters. The attorney has also provided legal services to an employee of same corporation who manages the business affairs of the corporation. The sole stockholder of the corporation seeks to sell the employee stock in the corporation payable by a promissory note. The sole transaction will also involve the negotiation and execution of a long term employment contract for the employee. The employee will be represented by independent legal counsel. The attorney asks whether the firm can represent the sole stockholder in the transaction given the prior legal representation of the employee.

Given the facts provided, the Panel is unable to determine whether the employee has a continuing attorney-client relationship with the law firm or whether the employee is a former client to the law firm.

If an attorney-client relationship exists, Rule 1.7 applies and the attorney should strictly adhere to its language. Rule 1.7 states:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

If the employee is no longer a client of the law firm, then the employee would be a former client and Rule 1.9 entitled "Conflict of Interest: Former Client" would apply. 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.

Under this Rule, representation of the stockholder would be permissible as long as the matters are not "substantially related" to the prior representation of the employee and the attorney does not use information relating to the prior representation to the disadvantage of the employee.