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ETHICS ADVISORY PANEL
OPINION #93-49, REQUEST #384
Issued July 28, 1993

An attorney represents Client A in a criminal matter. The victim in this matter had been previously represented by another attorney in the same firm in an unrelated criminal matter. In Client A's defense, it will be necessary to impeach the victim using his/her past criminal record and other public records. The attorney states that any information contained in the law office's file that is not a matter of public record will not be used.

Rule 1.9 entitled "Conflict of Interest: Former Client" states that: "A lawyer who has formerly represented a client in a matter shall not thereafter. . . (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." Pursuant to Rule 1.10 entitled "Imputed Disqualification: General Rule," Client A is a former client by reason of imputation.

The Panel believes the attorney may use information that has become generally known or is a matter of public record to impeach the victim. The Comment to the Rule states that although information acquired by the lawyer during representation may not be used, "the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client."