

ETHICS ADVISORY PANEL
OPINION #94-17 REQUEST #471
Issued March 23, 1994

For many years, the inquiring attorney represented a lending institution regarding a variety of matters. This institution is currently under receivership. One of the company's board members would like to retain the inquiring attorney to represent him/her personally in a matter commenced by the receiver to this company. The inquiring attorney asks whether the representation of the director would violate the Rules of Professional Conduct.

Rule 1.9 entitled "Conflict of Interest: Former Client" provides as follows:

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 interest 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 of Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

Under the Rule the propriety of subsequent representation depends on whether the former and present matters are substantially related, whereby confidences obtained in the first representation may not be used to the disadvantage of the former client during the representation of the present one.

The Panel opines that given these facts, a substantial relationship does exist between the past representation of the lending institution and the Board members. In order for the inquiring attorney to represent a Board member, it will be necessary for him/her to obtain the consent from the receiver for the lending institution pursuant to subsection (a). In addition, the Panel notes that under subsection (b), confidential information may not be used to a former client's disadvantage.