

ETHICS ADVISORY PANEL  
OPINION # 94-28, REQUEST # 488  
Issued March 23, 1995

The inquiring attorney seeks the Panel's advice regarding a conflict of interest. The following description of facts resulted in two (2) lawsuits stemming from the same fatal automobile accident.

In the first case, the passenger in the decedent's car filed a lawsuit against the deceased. The inquiring attorney's law partner was retained by the insurance company to represent the deceased's estate. The inquiring attorney states that his partner's only involvement was to expedite a settlement within the limits of the insurance policy. Liability was not contested and the case did settle for the maximum amount allowed under the insurance policy.

In the second lawsuit, the deceased's husband as executor of the decedent's estate filed a claim on behalf of the deceased's estate against the same insurance company. This claim has been submitted to arbitration. The husband is represented by Attorney A and the inquiring attorney represents the insurance company. The husband objects to the inquiring attorney's representation of the insurance company and has requested that the inquiring attorney withdraw from the representation.

Rule 1.9 entitled "Conflict of Interest: Former Client" states the following: 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.

In addition, Rule 1.10 entitled "Imputed Disqualification: General Rule" states in pertinent part:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

Rules 1.9 and 1.10 prohibits the attorneys in the same law firm from representing a client in a matter materially adverse to the interests of any former client of the law firm in the same or a substantial matter, absent consent after consultation.

In this situation, the former client, the decedent through the executor, is objecting to the representation of the insurance company, therefore, the inquiring attorney cannot continue the representation pursuant to Rule 1.9. The matters are substantially related and the interests are materially adverse to the former client. The Panel is unable to conclude that the inquiring attorney should be excused from this conflict by reason of the limited issues dispositive of or the scope of representation of the decedent's estate in, the first action.