

Final

ETHICS ADVISORY PANEL
OPINION # 94-71 (A) REQUEST # 542
Issued January 11, 1995

An inquiring attorney has requested that the Panel clarify its Opinion 94-71 (Issued November 15, 1994). The Panel has agreed to do so. The inquiring attorney is being challenged on a motion to disqualify his/her law firm from representing a plaintiff in a civil matter. The opposing party's counsel alleges that the litigation matter is substantially related to a matter handled by the law firm at which the inquiring attorney was formerly employed. Both the opposing party and counsel have stated that they have no evidence that the inquiring attorney has any personal knowledge relating to this client or the matter. The inquiring attorney states that he/she had no personal contact with this client.

Rule 1.10(c) of the Rules of Professional Conduct provides as follows:

When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of the client represented by the formerly associated lawyer unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

The comments to this Rule provide:

Paragraph (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interest of the two clients conflict.

Rule 1.9 entitled "Conflict of Interest: Former Client" 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.

Professor Hazard who opines on the Rules of Professional Conduct states the following regarding imputed disqualification:

The position adopted through the combined effects of Rules 1.9 and 1.10 recognizes a reasonable balance of the interest involved when a lawyer switches firms. The key test is the incoming lawyer's actual knowledge about a former client. If the incoming lawyer has such knowledge, then that lawyer personally is barred from adverse representations in related matter, under Rule 1.9. Rule 1.10(a) then disqualifies all members of the new (current) firm from handling matters to which the knowledge pertains and matters substantially related thereto. If the moving lawyer has no client-specific information, however, then even the moving lawyer is not barred, and there is nothing to impute to others. The Law of Lawyering, Handbook on the Model Rules of Professional Conduct, Geoffrey C. Hazard and W. William Hodes, Section 1.10: 208 (1994 Supp).

Whether or not the matters are substantially related, the inquiring attorney is not imputedly disqualified under Rules 1.9 and 1.10 from representing the plaintiff because the inquiring attorney does not possess any actual knowledge about the former client. As acknowledged by all parties involved, no lawyers in the inquiring attorney's new law firm have material information protected by Rules 1.6 and 1.9(b). See, also Rhode Island Ethics Advisory Panel Opinion 94-74.