

ETHICS OPINION 2010-04

Rule: 1.9
Subject: Representation of new client in matters substantially related to prior representation of another client
Summary: Drafting a corrective deed for a new client is barred absent the written informed consent of the prior client

Attorney previously represented a grantor who provided a deed to real estate in gift to a non-profit association. The deed contained an error and the non-profit has approached attorney to represent them to pursue a quiet title action against the grantor who has refused to sign a corrective deed. Attorney has asked if this representation is permissible.

Rule 1.9 precludes a lawyer from being adverse to a former client in “the same or a substantially related matter” absent the former client’s informed consent, which must be provided in writing. Correction of a deed prepared for the prior client is sufficiently substantially related to be barred absent that written consent provided to attorney by the prior client. In the absence of such consent, representation of the new client to obtain a corrective deed may not proceed.

Neil Fulton, Chair
Ethics Committee
State Bar of South Dakota