

DIGEST OF ETHICS ADVISORY PANEL
Opinion #88-11, Request #18
ISSUED MAY 13, 1988

An attorney seeks Panel advice as to whether it is permissible under the Code of Professional Responsibility to represent a client's medical insurance carrier in its subrogation claim in addition to representing the client himself in his direct claim for personal injuries.

Under Disciplinary Rule 5-105(A) the attorney's representation of the medical insurance carrier in its subrogation rights as well as the client constitutes a violation of the Code of Professional Responsibility unless the situation falls within the exception set forth in DR 5-105(C). This disciplinary rule reads, in pertinent part:

In situations covered by DR 5-105(A) . . . a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

The Panel takes the position that if both the medical insurance carrier and the individual client agree to such dual representation prior to execution of the attorney's agreement with the medical insurance carrier then the dual representation is permissible under the Code of Professional Responsibility.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.