

DIGEST OF ETHICS ADVISORY PANEL  
OPINION #88-18, REQUEST #21  
Issued July 28, 1988

An attorney seeks Panel advice as to whether it is permissible under the Code of Professional Responsibility for him to accede to his client's request to proceed with a claim which may or may not be warranted under existing law.

The attorney advises the Panel that an essential element of the claim his client wishes to make has been abolished by statute. The attorney states, however, that he believes a good faith argument can be made that the abolishing statute is unconstitutional.

Disciplinary Rule 7-102 provides, in pertinent part:

(A) In his representation of a client a lawyer shall not .  
. . . (2) knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law. (emphasis supplied)

The Panel cannot, of course speculate as to the merits of the attorney's claims. The Panel takes the position that since the attorney sincerely believes that a good faith argument can be made on his client's behalf, it is permissible under the Code of Professional Responsibility for him to proceed in the matter.

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.