

DIGEST OF ETHICS ADVISORY PANEL
OPINION #88-19, REQUEST #32
Issued July 28, 1988

An attorney seeks Panel advice as to whether it is permissible under the Code of Professional Responsibility for his firm to continue to represent one client ("client A") where a dispute has arisen between client A and another client of the firm ("client B").

The attorney advises the Panel that the firm has represented client A on a range of matters for many years. The attorney further advises the Panel that within the last several years the firm has represented client B in several isolated matters. The attorney explains that client A entered into a contractual relationship with client B; that client B was represented by outside counsel and that the attorney's firm represented client A with the full knowledge and consent of all. The attorney explains, further, that a dispute has now arisen concerning the interpretation of that contract, and the case is presently pending in court.

Client B objects to the firm's continued representation of client A because of its representation of client B in other unrelated matters and because of information which client B claims the firm may have obtained during such representation.

The Panel takes the position that it cannot reach any conclusions as to whether relevant, privileged information was conveyed to the firm during the earlier representation. The Panel commends the inquiring attorney for having sought and received the consent of both parties prior to his representation of client A. However, the Panel takes the position that a contested fact situation such as this must be resolved in an adversary proceeding.

Ethics Advisory Panel Rule 2, entitled "Jurisdiction" provides, in pertinent part, that the Panel may decline to render an advisory opinion if:

(e) The request contains insufficient information on which the Panel can make a judgment.

and

(f) The request is not in the form required by Rule 3 hereof.

Rule 3 sets forth the required form for all advisory opinion requests. It provides, in pertinent part, that an inquiry must contain a representation that "the opinion of the Panel will not affect interests of parties to any pending action."

The Panel takes the position that it cannot respond to your inquiry in view of Panel Rules 2(e), 2(f) and 3.

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.