

DIGEST OF ETHICS ADVISORY PANEL
Opinion #88-24, Request #22
Issued September 22, 1988

An attorney seeks Panel advice as to whether a lawyer may recommend to a client that a client engage the services of a certain association composed of expert witnesses or may represent a client who has engaged such an organization. The attorney advises the Panel that the association in question is designed to provide clients or attorneys with non-legal experts to serve as witnesses or with expert reports to be used in court. The attorney explains that the association in question may be retained on a contingent fee basis. The attorney adds that his request for an advisory opinion is made on behalf of the association, which is a client of his office.

Ethics Advisory Panel Rule 2 provides, in pertinent part, that

The Panel may decline to render an advisory opinion if . . .

(b) The request concerns a hypothetical situation and does not arise from a factual situation faced by the inquirer.

Ethics Advisory Panel Rule 3 provides, in pertinent part that a request for an Ethics Advisory Panel Opinion

. . . shall . . . contain a representation by the inquirer that the factual situation described directly affects the inquirer's professional conduct and that the opinion of the panel will not affect interests of parties to any pending action.

The attorney's request for an advisory opinion does not comport with the requirements of Panel Rules 2(b) and 3. The Panel must, therefore, decline to render an advisory opinion.

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.