

DIGEST OF ETHICS ADVISORY PANEL
OPINION #88-26, REQUEST #23
October 20, 1988

An attorney seeks Panel advice as to whether conflicts of interest would arise in five specific situations.

First, the attorney describes himself as an attorney with a real estate practice who owns a 50% interest in a mortgage brokerage corporation. He asks whether a conflict of interest would arise if the mortgage brokerage entity utilizes his services as an attorney in closing its loans. The Panel takes the position that this relationship is permissible under the Code of Professional Responsibility.

In a second scenario, the attorney incorporates the first situation, but adds a potential borrower who executes a written waiver of his right to select independent title counsel and elects, in writing, to have the attorney for the mortgage company represent his interest with regard to the title work. Ethical Consideration 5-19 provides, in part, that "a lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, he should explain any circumstances that might cause a client to question his undivided loyalty." In taking the position that this second scenario presents no violation of the Code, the Panel assumes that the inquiring attorney has fully disclosed to the client his business relationship to the mortgage company.

In a third scenario, the inquiring attorney incorporates the first two fact situations but adds the fact that the borrower/buyer wishes the inquiring attorney to represent him in the closing of the purchase and sale agreement in addition to representing him in closing the loan and doing the title work. The Panel takes the position that this third scenario presents no violation of the Code provided the inquiring attorney adheres to the full disclosure provisions of EC 5-19.

Finally, the inquiring attorney asks whether he may share space with the mortgage company in the same suite of offices, and whether he and the company may share the expense of overhead costs such as a receptionist and conference room. The Panel takes the position that the space and cost sharing arrangements described are 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.