

DIGEST OF ETHICS ADVISORY PANEL
Opinion #88-31, Request #41
Issued January 12, 1989

An attorney seeks Panel advice as to whether he may properly participate in the submission of an offer to two clients, Mr. and Mrs. Z, for the purchase of their real estate. The attorney advises the Panel that his interest in being a purchaser is welcomed by Mr. and Mrs. Z. He also states that two other clients of his are interested in becoming his partners for purposes of this purchase. Finally, the attorney advises the Panel that it has been mutually agreed that if he and his clients submit an offer to Mr. and Mrs. Z, Mr. and Mrs. Z will engage an independent attorney and an independent accountant to advise them.

Rule 1.8(a) provides:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

The Panel takes the position that if the attorney complies with the requirements concerning disclosure, fairness and client consent set forth above then it is proper for him to participate in the partnership arrangements and the submission of an offer to purchase which he has outlined.

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.