

DIGEST OF ETHICS ADVISORY PANEL
OPINION 89-9, REQUEST #51
Issued June 15, 1989

An attorney seeks Panel advice concerning what steps she should take to avoid a conflict of interest in the specific circumstances she describes. The attorney advises the Panel that she is a staff attorney serving a state agency. She explains that she provides advice to the agency's hearing officers on legal issues as needed, drafts documents consistent with their rulings and represents the agency in related litigation. The attorney states that a matter will be heard shortly in which the respondent is a branch of a certain municipality. The attorney advises the Panel that she has a personal claim pending which is due to be heard by a different branch of the same municipality. The attorney asks, first, if she should recuse herself from the case against the respondent branch of the municipality in question. Second, the attorney asks the Panel if it is permissible for her to carry out her usual responsibilities if both parties consent to her participation after full disclosure. The attorney states that she believes her judgment and advice would be unbiased, but that she is concerned about the appearance of impropriety.

Rule 1.7(b), titled "Conflict of Interest: General Rule" provides, in pertinent part that

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's . . . own interests unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents after consultation . . .

The Panel takes the position that no conflict of interest arises provided the attorney makes full disclosure of her pending personal matter to all parties involved, and obtains the consent mandated by Rule 1.7(b)(2). Thus, upon obtaining the consent of all parties involved the attorney may advise the state agency in her usual manner. The Panel finds that the attorney's third and final query is moot in light of this determination.

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.