

DIGEST OF ETHICS ADVISORY PANEL
OPINION 89-12, REQUEST #58
Issued June 15, 1989

An attorney seeks Panel advice as to what action, if any she should take in the circumstances she describes. The attorney advises the Panel that a woman, "Mrs. X," consulted her on several occasions during the past several years concerning getting a divorce. The attorney states that Mrs. X was particularly interested in removing her husband, Mr. X, from the marital home. The attorney states that she asked Mrs. X whether her husband drank to excess, used illegal drugs or abused her in any way and were told that he did not. The attorney states that Mrs. X told her that her husband yelled at her only upon learning of her affairs with other men. The attorney states that she advised Mrs. X that Mrs. X could file for the divorce and also ask for temporary support and exclusive temporary use of the marital domicile but that she could not get a temporary restraining order because she was not in any danger. The attorney also states that she told Mrs. X that she could not guarantee that the judge would order Mr. X to move out. The attorney advises the Panel that some time later Mrs. X picked up her file, stating that she had retained new counsel and that at that point the attorney believed she had seen the last of the matter.

The attorney states that she was recently seated in a courtroom waiting for her own, unrelated case to be called when she witnessed Mrs. X testifying on a temporary restraining order she had gotten. The attorney indicates that the representations Mrs. X made to the court were totally different from what she had told the attorney. The attorney states, for example that Mrs. X told the court that she suffered constant abuse from Mr. X.

The Panel first commended the inquiring attorney on her concern for the integrity of the judicial process. Rule 1.6, titled "Confidentiality of Information" provides, in pertinent part:

(A) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (B).

(B) A lawyer may, But is not obligated to, reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm . . . (emphasis supplied)

The prohibition against revealing "information relating to representation of a client" is clearly controlling. The Panel takes the position that there is nothing that the inquiring attorney can or should do concerning the discrepancy between what Mrs. X told her and what Mrs. X told the court.

89-12

Page Two

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.