

DIGEST OF ETHICS ADVISORY PANEL
OPINION 89-19, REQUEST #66
Issued September 14, 1989

An attorney seeks Panel advice as to what additional steps, if any, he ought to take to comply with the provisions of Rule 1.7 of the Rhode Island Rules of Professional Conduct under the circumstances he outlines.

The attorney advises the Panel that his firm is counsel to a municipal water supply board. The reservoir representing most of this municipality's water resources drains into a certain river, hereinafter "the M river." Client A, a private individual has retained the attorney's firm to represent him in connection with his development of property along the bank of the M river.

The attorney's firm's representation of Client A consists principally of seeking relief from restrictions imposed by a state agency, on the development of land which is contiguous to water. The attorney further advises the Panel that under an old public law, the water supply board is required to release a certain amount of water into the M river to benefit riverside property. Client A retained an attorney outside the inquiring attorney's firm to bring suit against the water supply board to compel the water supply board to release the appropriate flowage. Upon receiving this complaint, one of the inquiring attorney's partners consulted with Client A concerning the possible conflict of interest posed by prosecuting one suit for A while another attorney in the same firm defends a client being sued by A. After this consultation A consented to continued representation by the inquiring attorney's firm. The inquiring attorney's partner states that he does not believe that his representation of A in connection with state agency regulation of land contiguous to water will be adversely affected by the firm's defense of the water supply board.

The inquiring attorney further advised the Panel that he disclosed to the water supply board the potential conflict of interest. The inquiring attorney states that the water supply board also consents to his continued representation despite the fact that another member of the firm represents A. The inquiring attorney states that he does not believe that his representation of the water supply board will be adversely affected by his partner's representation of A in the other case. The inquiring attorney asks Panel advice as to whether the oral consent of both clients involved is sufficient under the circumstances.

Rule 1.7 codified the general rule concerning conflicts of interest. Section (b) provides, in pertinent part:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or 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 under the circumstances as outlined, oral consent after consultation from both affected clients satisfies the requirements of Rule 1.7(b). The Panel notes, however, that in this and many similar situations obtaining written consent may be advisable.

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.