

DIGEST OF ETHICS ADVISORY PANEL
OPINION #89-22, REQUEST #73
Issued December 7, 1989

An attorney seeks Panel advice as to the propriety of undertaking representation of a certain individual under the circumstances he describes. The attorney advises the Panel that the individual, Ms. X, sought his assistance in pursuing a medical malpractice claim against a physician on the staff at a local hospital and against the out patient clinic of the hospital. The attorney states that one of his partners is a member of the Board of Directors of the hospital in question. The attorney adds that neither he nor any member of his firm has ever done any legal work for the hospital in the past, and that his firm does not represent the hospital in any way at the present time. The attorney states that he does not believe that his representation of Ms. X would be adversely affected by his partner's position on the board of directors. The attorney asks whether he may undertake representation of Ms. X.

Rule 1.7, titled "Conflict of Interest: General Rule" provides, in pertinent part:

* * *

(b) 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 consideration.

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Rule 1.11, titled "Imputed Disqualification: General Rule" provides in pertinent part:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them, practicing alone, would be prohibited from doing so by Rule 1.7 . . .

* * *

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

The Panel takes the position that the inquiry attorney's partner's position on the Board of Directors of the hospital in question could constitute a limiting interest within the meaning of Rule 1.7(b). Under the imputed disqualification provisions of Rule 1.11, if the inquiring attorney's

partner may not represent a given client, then the inquiring attorney is also barred from assuming that representation.

Rule 1.7(b) provides, however, that when a lawyer believes that the representation of a client will not be adversely affected, any impropriety can be cured by obtaining client consent. This waiver of disqualification provision is referenced in Rule 1.11(d).

The Panel takes the position that the inquiring attorney may properly represent Ms. X if he obtains consent after consultation from Ms. X and from a representative of the governing body of the hospital in question.

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.