

DIGEST OF ETHICS ADVISORY PANEL
OPINION #90-7, REQUEST #79
Issued January 18, 1990

An attorney seeks Panel advice as to whether he may represent a certain client under the circumstances he describes.

The attorney advises the Panel that he has represented a local car dealership for a number of years. He states that several months ago one of the dealership's independent salespeople left the dealership; the attorney adds that he was unaware of the circumstances until recently. After the salesperson left the dealership he called the attorney several times to ask general questions about the new car business and about certain franchises for a new type of motor vehicle. The attorney states that he briefly reviewed the draft of a franchise agreement with him, but that since none of these contacts took much of his time, he never billed him.

The attorney states that the client dealership recently received a letter from the salesperson's attorney contesting the amount of money paid to the salesperson upon his termination. The attorney states that to the best of his recollection he never discussed the substance of the salesperson's termination either with the client dealership or with the salesperson. The attorney states that the salesperson's attorney has now suggested that a conflict of interest arises from his continued representation of the car dealership in this matter in light of his conversations with the salesperson. The attorney asks whether he may continue to represent the dealership in the dispute with the salesperson.

The salesperson's consultations with the attorney created an attorney-client relationship; the fact that the attorney did not charge the salesperson a fee has no effect on the formation of the relationship. See, e.g. Michigan Ethics Opinion Cl-1153 (10/1/86); Maine Ethics Opinion 62 (9/4/85). The fact that there was an attorney-client relationship with both the dealership and the salesperson activates the pertinent provisions of Rule 1.7.

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

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
 - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 - (2) each client consents after consultation.

The attorney has already indicated that he does not feel that his relationship with the salesperson would adversely impact on his representation of the dealership. The Panel takes the position, therefore, that the attorney may properly represent the dealership with regard to the salesperson's claims if both the salesperson and a representative of the dealership consent after consultation.

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.