

DIGEST OF ETHICS ADVISORY PANEL  
OPINION 90-14, REQUEST #89  
Issued February 27, 1990

An attorney seeks Panel advice as to whether a conflict of interest would arise under the circumstances she describes.

The attorney advises the Panel that she has been offered a position in the city solicitor's office of City X. The attorney advises the Panel that within the city solicitor's office there are several different and distinct positions including, for example, advising the Zoning Board or defending City X in personal injury cases. The attorney indicates that the position with the city solicitor's office would enable her to maintain a private practice and that she wishes to remain part of the law firm with which she is now associated. The attorney seeks Panel advice as to whether she may sue City X in her capacity as private attorney in, for example, a personal injury case. The attorney asks whether the answer to this query depends on her precise responsibilities within the city solicitor's office. For example, if the attorney's responsibilities to City X are limited to advising the Zoning Board, may she sue the City in a personal injury case? The attorney also asks whether any disqualification which arises is personal to her or whether it disqualifies her entire firm.

Rule 1.7, titled "Conflict of Interest" 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

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In reviewing the practical effect of Rule 1.7(a) Professor Hazard notes that the requirement of "reasonable belief" amounts to a virtually per se ban on simultaneous representation of adverse interests, since the words impose an external standard of propriety. I G. Hazard The Law of Lawyering 132-133 (1989).

Accepting a position in the city solicitor's office makes the city a client of the attorney. In Opinion 173 the New Jersey Supreme Court Advisory Committee on Professional Ethics notes:

In a broad sense an attorney representing a municipality or any of its agencies has as his 'clients' the entire municipality, and he should avoid any retainers from others which may place him in a position where he appears to be either seeking relief or favor from the municipality or any of its agencies for a private client or to oppose action by

the municipality, or its agencies on behalf of a private client.

The Panel takes the position that if the attorney accepts any position in the solicitor's office of City X she may not thereafter represent a client whose position is directly adverse to City X.

Rule 1.10 titled "Imputed Disqualification" 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 Rules 1.7, 1.8(c), 1.9 or 2.2.

The Panel takes the position that if the attorney accepts any position in the solicitor's office of City X all members of her firm are disqualified from representing a client whose position is directly adverse to City X.

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.