

DIGEST OF ETHICS ADVISORY PANEL  
Opinion 90-16, Request #84  
Issued April 18, 1990

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

The attorney advises the Panel that he maintains a private practice and also holds a part time position as legal counsel to a certain state office ("Office X") which is part of the Governor's Executive Department. The attorney states that the "Y Grant Program" is under the jurisdiction of Office X; thirty percent of the attorney's salary as legal counsel to Office X is paid by the Y Grant Program.

The attorney advises the Panel that he was contacted by an individual, Mr. S, regarding a claim which Mr. S believes his architectural firm has against City X. The attorney states that Mr. S performed services on a specific project for City X, and that this work was added to an existing contract which Mr. S's firm had with City X, as an extension. The attorney indicates that City X did not publicly bid the services at issue.

The attorney states that Mr. S informs him that he is aware that the City was planning to be reimbursed with federal funds for the projects in which he was one of the participants. Mr. S. informs the attorney that the City violated federal guidelines by failing to open the project to public bid and, as a result, was not entitled to reimbursement with federal funds. Reimbursement was officially refused by the Y Grant Program. Mr. S states that he believes this is why the City refuses to pay him.

The attorney states that he asked the Program Director of the Y Grant Program if she was aware of the claim for reimbursement by the City and she responded that she did, indeed give the refusal required by federal guidelines. This refusal is final, but the Program Director indicated that she was aware that some resolution was possible apart from her office in that the Department of Environmental Management might fund some of the project in the absence of reimbursement with federal funds. The attorney states that he was not aware of this matter until contacted by Mr. S. The attorney states that no one from that section of Office X which handles the Y Grant Program has asked him for his opinion or advice. The attorney asks if he may properly represent Mr. S in his attempts to collect the money due him from City 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 consultation

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Since the Y Grant Program is both the entity denying federal funds and is also responsible for paying the attorney's salary, the attorney's relationship to the Y Grant Program could be considered a limiting interest within the meaning of Rule 1.7(b). The Panel assumes that the attorney has met the requirement of Rule 1.7(b)(1) in that he reasonably believes that his representation of Mr. S will not be adversely affected by his relationship with the Y Grant Program. In order to fulfill the requirement of Rule 1.7(b)(2) the attorney must obtain consent from Mr. S after a consultation in which the attorney discussed his relationship with the Y Grant Program. Client consent must be informed consent and informed consent requires full disclosure. See, e.g. New Jersey Advisory Committee on Professional Ethics Opinion 373. "Full disclosure" involves a reasonable effort to expose present problems and to anticipate future perils. Full disclosure is not a set of conclusory statements but a recitation of specific details and an explanation of foreseeable consequences. DeBott v. Parker, 560 A.2d 1323 at 1329 (1988).

The Panel takes the position that the attorney may properly represent Mr. S in connection with Mr. S's attempt to collect money due him provided the attorney satisfies the requirements of Rule 1.7(b)(1) and (2).

In a second part of his letter the attorney asks the Panel whether he may properly refer Mr. S to another attorney who rents office space nearby. In responding to this portion of the attorney's inquiry the Panel assumes that the attorney is asking about the propriety of a referral in the absence of compliance with Rule 1.7(b)(1) and (2). If the requirements of Rule 1.7(b)(1) and (2) are met then the inquiring attorney could, of course, refer Mr. S to another attorney regardless of whether that attorney was the inquiring attorney's partner or not.

The inquiring attorney advises the Panel that he rents space from attorneys named Mr. M and Mr. J. The attorney states that he has his own stationery, pays his own malpractice insurance and that any professional relationship with Messrs. M and J is on an independent contractor basis. The attorney states that he shares a phone with Messrs. M and J and that this phone is answered "M and J".

Rule 7.5 titled "Firm Names and Letterheads" provides, in pertinent part that

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

To avoid the appearance of a partnership or other affiliation when none exists, an attorney must maintain his or her own stationery, and must use separate business cards, building directories and other announcements. Phones must be answered with either the attorney's name alone or with a neutral salutation such as "Law Offices" which does not give rise to the appearance of an association. Thus, the Panel takes the position that for the attorney's business phone to be answered "M and J" creates the appearance that he is associated with Attorneys "M and J" and thus violates Rule 7.5(d). In the absence of pictures or diagrams of the signs on the building it is impossible for the Panel to render an opinion as to their propriety. See Digest of Ethics Advisory Panel Opinion 88-5. All other aspects of the office arrangement described is consistent with a group of independent attorneys. In the absence of compliance with Rule 1.7(b)(1) and (2), however, the phone answered "M and J" creates the appearance of an association and would make it improper for the attorney to refer the case to Attorneys M or J or to their associates.

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.