

DIGEST OF ETHICS ADVISORY PANEL

Opinion #90-17, Request #94

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 while he was employed as a prosecutor with the Attorney General's Department he prosecuted an individual (Mr. X) on a charge of driving to endanger, death resulting. The attorney explains that Mr. X struck and killed an individual in the Town of Gotham. He states that a Gotham detective assisted him in the preparation and trial of the case and that the attorney had access to police reports, the full testimony of witnesses and Department of Transportation (DOT) data concerning the road involved. The attorney indicates that all DOT data, witness names and police reports were obtained through the usual investigatory procedures and that none of the information was privileged. The attorney states that Mr. X was convicted and is now appealing his conviction.

The attorney explains that after he entered private practice the father of the individual who was killed approached him seeking representation in a civil action which the father wished to pursue against several defendants, including Mr. X, and the Town of Gotham. The attorney asks whether it would be proper to do so.

Rule 1.11, titled "Successive Government and Private Employment" provides, in pertinent part:

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public officer or employee . . .

* * *

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding application, request for a ruling or other determination, contract claim controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties . . .

The Panel takes the position that the attorney may not undertake representation of Mr. B with regard to a civil case arising from a criminal case in which the attorney participated as a government employee.

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.