

DIGEST OF ETHICS ADVISORY PANEL
OPINION 90-22, REQUEST #101
Issued May 31, 1990

An attorney seeks Panel advice as to the propriety of serving in certain capacities under the circumstances he describes.

The attorney advises the Panel that his license to practice law in this state has been suspended by the Supreme Court. The attorney states that he is an administrator represented by counsel in a probate estate and that he is a co-executor unrepresented by counsel in another probate estate. He asks whether he ought to continue to serve in these capacities.

It is well settled that a lawyer is bound by applicable rules of professional conduct whether or not he or she is acting in a professional capacity. See ABA Formal Opinion 336 (6/3/74). Rule 8.4, titled "Misconduct" provides, in pertinent part:

It is professional misconduct for a lawyer to:

* * *

(d) engage in conduct that is prejudicial to the administration of justice . . .

American courts have been nearly unanimous in concluding that suspended attorneys may not properly make appearances in court. This ban extends to courts such as small claims court in which lay persons may appear. Application of Christianson N.D. Supr., 215 N.2d 920 (1979). Courts have reasoned that there is a great distinction between a person who, once admitted to the bar, is deemed temporarily unfit to practice and one who has never sought admission to the bar. For a suspended attorney to publicly engage in quasi-legal activities, even those which might be properly carried on by a lay person would be detrimental to the judicial system. Florida Bar v. Thompson, 310 So.2d 300, 87 ALR.3d 272 (1975); Legal Services by Suspended Attorney, 87 ALR 3d 279.

The Panel therefore takes the position that for the attorney to act as administrator represented by counsel or as a co-executor during the term of his suspension from the practice of law would be a violation of Rule 8.4(d).

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.