

DIGEST OF ETHICS ADVISORY PANEL
OPINION 90-24, REQUEST #103
Issued May 31, 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 represents Insurance Company X in defense of workers' compensation claims made against a certain large manufacturing company (Company Y). The attorney states that this is the only work he does for Insurance Company X and that the real party in interest is Company Y, since Company Y has a \$100,000 deductible and is, in effect, self-insured up to that point.

The attorney states that an individual, (Ms. B), has asked him to represent her in connection with her work-related injury. Ms. B's employer is one of Insurance Company X's insureds, and is not Company Y. The attorney asks whether he may represent Ms. B. against Insurance Company X if both Insurance Company X and Ms. B consent.

Rule 1.7 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.

Since the attorney represents Insurance Company X in defense of claims made against its insured, Company Y, both entities are the attorney's clients for purposes of a conflict of interest analysis. For purposes of this response, the Panel assumes that there is no relationship, direct or indirect between Ms. B's employer and Company Y. The Panel also assumes that the attorney has met the requirement of Rule 1.7(a)(1) in that he reasonably believes that his representation of Ms. B will not be adversely affected by his relationship with Insurance Company X. In order to fulfill the requirement of Rule 1.7(a)(2), the attorney must obtain consent from an authorized official within Company X after a consultation in which he discussed the ramifications of his representation of Ms. B. The attorney must also obtain Ms. B's consent after a consultation in which he discussed his relationship with Insurance Company X. 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 Ms. B in connection with her work related injuries provided he satisfies the requirement of Rule 1.7(a)(1) and (2).

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.