

DIGEST OF ETHICS ADVISORY PANEL
OPINION #90-29, REQUEST #107
Issued June 25, 1990

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

The attorney advises the Panel that his wife is a clerk in the local United States Bankruptcy Court. The attorney states that his wife's duties are purely ministerial and are generally limited to filings made pursuant to 11 USCS § 1101 et seq. The attorney advises the Panel that he would like to represent clients seeking protection from creditors pursuant to the Bankruptcy Act and he indicates that would limit his representation to those clients whose filings are made pursuant to 11 USCS § 701 et seq. and 11 USCS § 1301 et seq. The attorney asks the Panel whether he may properly represent these clients.

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 own interests . . .

Rule 8.4(e), titled "Misconduct," provides, in pertinent part,

It is professional misconduct for a lawyer to:

* * *

(e) state or imply an ability to influence improperly a government agency or official . . .

Representing clients who are filing pursuant to 11 USCS § 701 et seq. and 11 USCS § 1301 et seq. does not involve any conflict between the interests of the attorney's clients and those of the attorney or his wife. The pertinent provisions of Rule 1.7 thus are not applicable and therefore have no relevance to the instant inquiry. Similarly, because the attorney's wife's function as clerk is purely ministerial, the pertinent provisions of Rule 8.4 have no application to the attorney's inquiry.

The Panel takes the position that it is proper for the attorney to represent clients filing pursuant to 11 USCS § 701 et seq. and 11 USCS § 1301 et seq. under the circumstances he describes.

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.