

Digest of Ethics Advisory Panel
Opinion #91-29, Request #139
Issued May 23, 1991

An attorney seeks Panel advice as to whether the attorney, acting as legal counsel to a corporation, may seek a court order to vacate the corporation's executive board, obtain an audit of the corporation's books, and appoint a property manager to administer the corporation's real property.

The underlying facts are as follows:

In 1988, XYZ Group, a corporation with three shareholders began a condominium project. The XYZ Group ran the operation of the condominium project until the end of 1989. XYZ Group turned control of its operation over to Ms. A, a sister of one of XYZ's shareholders.

The condominium project experienced severe financial difficulties. Ms. A hired the attorney to restore order to XYZ's chaotic financial state.

The attorney believes the client, the XYZ Group, is presently under a disability which renders it unable to properly care for itself and its assets. The attorney states that the XYZ Group's problems stem from the inability of the three shareholders to comply with corporate formalities and abide by the corporation's charter and by-laws.

The Panel takes the position that the Board of Directors of the XYZ Group is the client. The attorney may not substitute his/her judgment for that of his/her client. The attorney must either comply with the directions of the Board of Directors or withdraw from further representation of the XYZ Group.

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.