

ETHICS ADVISORY PANEL
OPINION #92-65, REQUEST #284
Issued September 16, 1992

An attorney seeks Panel advice with regard to the following facts. The attorney represents Client A in a matter where B and C are co-defendants. In a previous case, the attorney represented C's co-defendants, D and E. The attorney states that the attorney did not represent C on any occasion. However, in the previous matter C contributed to C's co-defendants, D and E, for their attorney's fees. The attorney asks whether his accepting a fee paid by C results in a conflict of interest as to his representation of A, who is now C's co-defendant.

The Panel directs the inquiring attorney's attention to Rule 1.8(f) "Conflict of Interest: Prohibited Transactions and the Comments thereto. The Rule states that:

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation,
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by Rule 1.6.

Paragraph (f) requires disclosure that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of Rule 1.6 concerning conflict of interest. See, Comment to Rule 1.8(f).

The Panel believes that the attorney may represent Client A in the present matter. The fact that C may have contributed to an earlier client's fee does not render C to be a former client. The representation would be governed by Rule 1.9 "Conflict of Interest: Former Client" if the inquiring attorney represented C in the past.