

ETHICS ADVISORY PANEL

OPINION #92-86, REQUEST #314

Issued March 15, 1993

An attorney seeks Panel advice with regard to the following circumstances. The attorney represents in their individual capacities, certain members of a town council. Some of the members of the town council are personal friends and / or business associates of the attorney. Most recently, a client sought the inquiring attorney's services in a matter before the same town council. The attorney contacted the town council members to advise them of the attorney's future involvement in an upcoming hearing. Several members of the town council recused themselves from the hearing due to the personal and/or business relationship with the attorney. The attorney's concern is that the town charter requires four affirmative votes to act favorable upon his client's request. Because three members recused themselves from the proceedings as a result of their relationship with the inquiring attorney the recusals effectively required a unanimous vote of the remaining council members for approval or grant of his client's request. The question is whether the attorney may appear and represent a client before this town council when he has knowledge that three members will recuse themselves leaving only four voting members, the minimum number required for the council to act.

The Panel believes that Rule 1.7(b) entitled "Conflict of Interest: General Rule" applies to this inquiry. The Rule states that:

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation.

The comments to the Rule state that "loyalty to a client is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client."

In this case, the lawyer's own interest is his personal relationship with the town council. There exists a conflict of interest because the attorney is unable to effectively represent the client in the hearing. The limited number of councilpeople qualified to vote is materially limiting the client's ability to be granted the license. Given the recusals, if the attorney reasonably believes that his client's interests are adversely affected, this is not a conflict that the client can waive. The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under the State Ethics Code or any other rules, regulatory or laws that may have a bearing on the issues raised by this inquiry.