

ETHICS ADVISORY PANEL  
Opinion #93-12, Request #342  
Issued March 31, 1993

An attorney seeks Panel advice with regard to the following circumstances. The attorney is in private practice as a sole practitioner. Recently, the attorney was temporarily appointed to a part-time administrative state position with one of the General Officers. The attorney will serve in this position until the position of part-time legal counsel is established in the same office. The issue is whether the attorney is prohibited from performing legal services for private legal clients while employed in the state position.

The Panel believes that the attorney is prohibited from representing clients in dealings in the government office for which he/she works. Rule 1.11 (a) and (b) entitled "Successive Government and Private Employment" states that:

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated a public office of employee. No lawyer in a firm with which that lawyer is associate may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(b) Notwithstanding any other provisions of this Rule, a lawyer who has been employed by any government office or agency shall not represent a private client before that government office or agency for a period of one year following the termination of such employment.

See also Preamble to the Rules of Professional Conduct which states that "A lawyer should avoid even the appearance of professional impropriety". The attorney may perform some ministerial acts for private legal clients. However, the Panel cannot opine on the nature or extent of the function of this particular general office. The attorney must make the determination of what acts are ministerial in nature.

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, regulations or laws that may have bearing on the issue raised by this inquiry.