

ETHICS ADVISORY PANEL  
Opinion #93-44, Request #390  
Issued June 30, 1993

The inquiring attorney represents ABC Corporation in a single litigation matter. Mr. X is an officer and minority shareholder of ABC Corporation. A dispute has arisen between Mr. X and other shareholders of ABC Corporation over the value of Mr. X's interest in the corporation. Mr. X would like to retain the inquiring attorney to represent him in this dispute. The inquiring attorney is also willing to withdraw from representing ABC Corporation to avoid a conflict of interest.

Rule 1.7 entitled "Conflict of Interest: General Rule" states that:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

The comments to the rule state that:

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation.

The Panel believes that the attorney may not represent Mr. X in a dispute with other shareholders of ABC Corporation unless the corporation and Mr. X consent after consultation.

Rule 1.17 entitled "Declining or Terminating Representation" sets forth the criteria where an attorney shall and may withdraw from representing a client. Unless the attorney can apply Rule 1.17 to the situation, withdrawal from representation is not permitted. See, Massachusetts Ethics Opinion 92-3 (9-22-92) which opined that a law firm may not represent one long-term client in a matter which is to the detriment of a current client's interests where the firm, against the current client's objections, withdrew from that client's ongoing and unrelated representation.