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(FINAL)

ETHICS ADVISORY PANEL
OPINION #93-46, REQUEST #379
Issued July 28, 1993

Attorneys A and B are the sole members of a firm and represent a client (defendant) in a civil action pending in the Superior Court. Attorney A represented defendant in arbitration, and later in settlement, negotiations. As a result of the settlement negotiations, an agreement was reached between the parties. The terms of the settlement agreement were memorialized in a written agreement that was signed by the attorneys. The settlement agreement is now at issue. Attorneys A and B have been notified by opposing counsel that they intend to call both Attorneys A and B as witnesses at trial.

Attorneys A and B request the Panel's advice with regard to whether Attorney B is disqualified from representing defendant at trial where Attorney B's participation in the matter was limited, and the facts to which Attorney B might be called upon to testify are unlikely to be crucial or in dispute.

Rule 3.7 governs this inquiry and provides as follows:

Rule 3.7. Lawyer as Witness.-

(a) A lawyer shall not act as advocate at trial in which the lawyer is likely to be a necessary witness except where:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case;
or
- (3) disqualification of the client would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Paragraph (b) contains a specific exception permitting a lawyer to act as an advocate even though another lawyer in his/her firm is likely to be called as a witness.

Given the facts as stated by Attorneys A and B, the Panel is of the opinion that Attorney B is not precluded from acting as defendant's advocate at trial. Attorney B is not likely to be a necessary witness and the potential testimony will not relate to contested issues.