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ETHICS ADVISORY PANEL
OPINION #93-50, REQUEST #385
Issued August 25, 1993

Husband and wife are sole practitioners, having completely distinct practices including separate offices, addresses, stationery, business cards and computers. Wife is also employed as legal counsel to the director of a state agency. Husband seeks to represent a private client of wife in a matter now pending before a state board. The board is statutorily separate from the agency where wife is employed, but it is funded by, and located in, the agency's facilities. Wife has never represented the board. Husband has agreed to represent the client before the board and inquires as to whether continued representation is permissible.

At the outset, the Panel notes that husband and wife do not constitute a law firm for the purposes of the Rules of Professional Conduct because they do not present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm. See, Comment to Rule 1.10. Therefore, the imputed disqualification principles of Rule 1.10 do not prohibit husband from continuing to represent the client.

Rule 1.8 addresses, in part, legal representation by lawyer-spouses. That rule provides in pertinent part as follows:

Rule 1.8 Conflict of Interest: Prohibited Transactions.-

(i) A lawyer shall not represent a client in any matter where the lawyer knows that the lawyer's parent, child, sibling, or spouse is the lawyer representing an adverse party to the transaction except upon consent by the client after consultation regarding this relationship (emphasis added).

Absent informed client consent, Rule 1.8(i) prohibits a lawyer from representing a client in a matter directly adverse to another person whose retained counsel is closely related to the lawyer. Subsection (i) reflects the perception that representation of opposing interests by closely related lawyers risks the inadvertent breach of client confidences. Annotated Model Rules of Professional Conduct, at 154 (2nd ed. 1992).

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Under the facts as presented, the Panel is of the opinion that the provisions of Rule 1.8(i) do not disqualify husband from representing the client. Wife is not the lawyer representing the adverse party, the board, and is not employed by the same.

The Panel's guidance is restricted to interpretations of the Model 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.