

ETHICS ADVISORY PANEL  
OPINION #93-80 REQUEST #422

Issued October 5, 1993

The inquiring attorney is a shareholder of a closely-held corporation and asks whether he/she may also act as lawyer to the organization.

Rule 1.7 entitled "Conflict of Interest: General Rule" provides in pertinent part as follows:

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

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation....

The Rule ensures "that a lawyer's range of options is not materially limited by other interests or responsibilities which might impair the lawyer's ability to consider, recommend, or carry out an appropriate course of action." Annotated Model Rules of Professional Conduct, 114 (2nd ed. 1992).

The Comment to the Rule, though addressing a lawyer's dual role as a board director and corporate lawyer, provides guidance in resolving this inquiry. It states in part as follows:

A lawyer for a corporation or other organization who is also a member of its board of directors should determine if the responsibilities of the two roles may conflict. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation obtaining legal advice from another lawyer in such situations. If there is a material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as director.

The Panel believes that by analogy the Comment has the same application to the shareholders of a closely-held corporation, having the dual role of corporate lawyer, as it does to members serving on a board of

directors. Thus, the inquiring attorney should be mindful of the potential for future conflicts arising as a result of the dual role.

In this case, the inquiring attorney seeks to represent the corporation of which he/she is a shareholder. To permit representation in compliance with Rule 1.7, the inquiring attorney must believe that the proposed representation will not be materially limited by his/her own interests as a shareholder, unless he/she believes that the representation will not be adversely affected and the corporation gives its consent after consultation.

Further, if the inquiring attorney undertakes representation of the corporation, he/she must strictly comply with the applicable provisions of Rule 1.8 (Conflict of Interest: Prohibited Transactions) and Rule 1.13 (Organization as Client).