

(0646)
FINAL

ETHICS ADVISORY PANEL
OPINION #93-82 REQUEST #424
Issued December 8, 1993

Attorneys A and B practice law in a partnership and together represented several clients in a Superior Court lawsuit against a municipality's mayor, treasurer and council. Attorney B was recently appointed as a member of the council of the same municipality. As a result, Attorney B has filed a motion to withdraw as counsel in the lawsuit and indicates he/she will abstain from voting or participating in any matter affecting the rights of the clients involved in the lawsuit. Attorney A inquires whether he/she may continue to represent the clients, in effect prosecuting a lawsuit against his/her partner.

Under the facts of this inquiry, the Panel believes that Attorney B is prohibited from continuing to act as counsel in the lawsuit pursuant to Rule 1.7(b). Rule 1.7(b) states:

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

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

As a result of Attorney B's disqualification under Rule 1.7, Attorney A is also prohibited from continuing to represent the clients in the lawsuit pursuant to Rule 1.10. That Rule states:

Rule 1.10. Imputed Disqualification: General Rule. - (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

The Panel notes that pursuant to paragraph (d) of Rule 1.10, the affected client may waive the disqualification under the conditions stated in Rule 1.7. However, in this case the Panel believes that

Attorney A cannot reasonably believe that the representation of the clients will not be adversely affected despite consent by the clients. Thus, the Panel concludes Attorney A may not continue to represent the clients.