

ETHICS ADVISORY PANEL
OPINION #94-18 REQUEST #472
Issued March 23, 1994

The inquiring attorney recently resigned as a former assistant attorney general. While working for the attorney general's office, the attorney was consulted regarding a fatal accident. The inquiring attorney's only involvement in the case was limited to advice regarding autopsies.

After the attorney was in private practice, the victim's mother contacted the inquiring attorney with regard to representing her in a wrongful death action. The inquiring attorney asks: (1) whether he/she is disqualified from representing this client by Rule 1.11; and (2) if disqualified, can his/her law partner undertake the representation, provided the proper screening procedures are applied.

This inquiry is addressed in Rule 1.11 entitled "Successive Government and Private Employment" which provides:

Rule 1.11. - Successive Government and Private Employment.

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public officer or employer. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to it to ascertain compliance with the provisions of this rule.

Rule 1.11(a)(1) permits the law partner of a former government lawyer to undertake or continue representation in a matter in which the former government lawyer participated personally if the attorney is screened from participation in it, including receipt of fees from it. The Panel concludes that the inquiring attorney's law partner may represent the potential client with the understanding that the inquiring attorney is screened from the matter and does not receive fees therefrom.