

ETHICS ADVISORY PANEL
OPINION #94-68 REQUEST #539
Issued September 28, 1994

The inquiring attorney is currently an assistant solicitor for Town A whose job entails prosecuting misdemeanors for the town's police department. Town A is billed on an hourly basis. The inquiring attorney would like to apply for an advertised position with Town B regarding the same prosecutorial role as described above with Town A. Town B would bill a flat amount per year and the prosecutions for both towns are scheduled for the same day. The attorney asks whether prosecuting for both towns poses any conflict and whether the fee arrangements would violate any ethical rules.

Rule 1.7 entitled "Conflict of Interest: General Rule" states that:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(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.

The Panel believes that prosecuting cases for Town B will not violate the Rules of Professional Conduct. The representation of Town A would not be directly adverse to Town B therefore the inquiring attorney can represent Town B as a special prosecutor for the police department. The Panel suggests that the attorney should gain each client's consent after consultation before undergoing the representation.

With regard to the fee arrangement, the Panel declines to render an opinion because the request seeks an opinion concerning conduct not governed by the Rules of Professional Conduct, however the attorney should be aware that he/she cannot double bill the clients.