

ETHICS ADVISORY PANEL
OPINION #94-75 REQUEST #548
Issued November 15, 1994

The inquiring attorney seeks advice from the Panel as to whether he/she may represent him/herself pro se in a pending matter. The attorney is concerned with Rule 3.7 which prohibits a lawyer from acting as an advocate at trial in which the lawyer is likely to be a witness.

Rule 3.7 entitled "Lawyer as Witness" states:

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Rule 3.7 was designed to avoid the public perception that the attorney as a witness is distorting the truth to help a client or enhancing his/her own credibility by taking an oath as a witness in the same proceeding. The rationale of Rule 3.7 does not apply to the pro se lawyer litigant. It is not improper for an attorney to appear as both lawyer and witness. See, ABA Annotated Model Rules of Professional Conduct, p. 394, 2nd ed.(1992).

The Panel opines that the Rules of Professional Conduct do not preclude a lawyer from representing himself, pro se.