

ETHICS ADVISORY PANEL  
OPINION # 95-6, REQUEST # 564  
Issued March 23, 1995

The inquiring attorney, a sole practitioner, was recently appointed clerk of a municipality's probate court. The clerk's functions include administrative duties as well as occasionally serving as acting probate judge. The inquiring attorney asks whether he/she is prohibited in his/her private law practice from appearing before this same municipality's boards and agencies.

In this case, the inquiring attorney is a clerk and not the attorney for the municipality. Despite the absence of an attorney/client relationship with the municipality, Rule 1.7(b) entitled "Conflict of Interest: General Rule" may be applicable. More specifically the inquiring attorney's representation of a client may be "materially limited by the lawyer's responsibilities to a third person, or by the lawyer's own interests." That Rule states:

Rule 1.7(b) Conflict of Interest: General Rule. -

(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 interest, 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 questions whether the inquiring attorney can reasonably believe that he can function as an effective advocate against his/her own employer or any governmental unit that has appointive authority over his/her municipal employment.

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The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under the State Ethics Code or any other rules, regulations or laws that may have a bearing on the issues raised by this inquiry.