

DIGEST OF ETHICS ADVISORY PANEL
OPINION #88-16, REQUEST #17
Issued July 28, 1988

An attorney seeks Panel advice as to whether a conflict would arise from representation of a client who is the wife ("W") in a domestic relations matter. The attorney indicates that he has been representing the husband ("H") with respect to problems between himself, his first wife and his first wife's husband. The attorney also indicates that H recently consulted him with regard to changing custody of H's child by a prior marriage. The attorney advises the Panel that he obtained certain confidential financial information from H in connection with this matter. The attorney explains that some time later W called him asking that he represent her in a divorce from H.

With reference to this fact situation, the attorney poses three questions to the Panel. First, he asks whether a conflict would arise if he undertook representation of W in a complaint for divorce from H.

Ethical Consideration 4-5 provides:

A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes. Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates. Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure.

Based on this ethical consideration the Panel takes the position that representing W in the situation the attorney has described would constitute a violation of the Code of Professional Responsibility.

Ethical Consideration 9-6 provides in pertinent part that a lawyer must "strive to avoid not only professional impropriety but also the appearance of impropriety." (emphasis supplied).

The Panel takes the position that representation of W or H in the circumstances described would be improper regardless of whether or not information obtained from H was actually relevant to W's complaint for divorce from H.

Second, the attorney asks whether it would be proper to represent H with respect to problems with his first wife. The Panel takes the position that this representation poses no conflict of interest or confidentiality problems and is permissible under the Code of Professional Responsibility.

Third, the attorney asks the Panel whether it would be proper for him to represent H with regard to seeking a change of custody of his child by a prior marriage, notwithstanding the pending divorce action involving W. Since the Panel has taken the position that the attorney may not be involved in W's complaint for divorce from H, the existence of that proceeding would be irrelevant to an analysis of the third query. The Panel takes the position that it is proper for the attorney to represent H with regard to the custody of his child by a prior marriage.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.