

DIGEST OF ETHICS ADVISORY PANEL
OPINION 89-1, Request #40
Issued February 21, 1989

An attorney seeks Panel advice as to whether he may properly accept an offer of part-time employment while remaining an associate of his present firm under the specific circumstances he describes. The attorney advises the Panel that he has been offered a position as a part-time attorney hired by the state to represent the state's interests against claims made by pursuant to a certain state statute. ~~The attorney advises the Panel that he has been offered a position as a part-time attorney hired by the state to represent the state's interests against claims made pursuant to a certain state statute.~~ The attorney advises the Panel that he wishes to remain an associate of his present firm and that he would plan to withdraw his appearance as attorney for clients bringing claims pursuant to the state statute in question. He further advises the Panel that, as a member of his present firm, he would not participate in the representation of any future clients of the firm who sought recovery pursuant to the state statute in question.

The attorney proposes two alternate scenarios to the Panel. First, he asks if he may properly accept the part-time employment if another associate of the firm represents all clients seeking recovery under the pertinent statute while another attorney in the state's employ represents the state's interests in all claims brought by the inquiring attorney's firm.

Second, the attorney asks if he may properly accept the part-time employment if all clients utilizing his firm's services to sue the state pursuant to the statute in question are represented by one associate and that one associate is isolated from the firm's other associates and partners in a variety of ways. The inquiring attorney suggests that this designated associate could have a separate clients' account, separate accounting procedures plus separate files and stationery.

The Preamble to the Rhode Island Rules of Professional Conduct states that "[a] lawyer should avoid even the appearance of professional impropriety." Rule 1.7 provides, in pertinent part:

Rule 1.7 CONFLICTS OF INTEREST: GENERAL RULE

(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.

Rule 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE

(a) while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 . . .

* * *

The Panel takes the position that the inquiring attorney may not properly accept the part-time employment described under either of the scenarios outlined. For him to represent a client seeking recovery from the state after assuming a responsibility to represent the state's interests would be improper under Rule 1.7; Rule 1.10 extends the prohibition to any member of the attorney's firm.

The inquiring attorney has also suggested that all clients invoking the statute in question might be channeled to one, isolated associate of the firm. The fact remains, however, that the isolated associate is still a member of the firm and thus subject to the proscription of Rule 1.10. In adopting this perspective, the Panel is mindful of the Disciplinary Board's policy on attorneys sharing office space, approved by this Court March 17, 1988. In this policy statement, the Disciplinary Board took the position that in order to avoid confusion in the public mind, even independent attorneys who share office space would be considered an association of attorneys despite a disclaimer to the contrary, unless their separate identities were scrupulously maintained in specific enumerated areas. The Panel is also mindful of the opinions of ethics committees in other jurisdictions, holding that it is unreasonable to believe that one associate in a small firm may be effectively sequestered. See e.g. Opinion 85-12 of the Committee on Professional Ethics of the Connecticut Bar Association.

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.