

DIGEST OF ETHICS ADVISORY PANEL  
OPINION #89-3, REQUEST #45  
Issued February 21, 1989

An attorney seeks Panel advice as to whether he may continue to represent his client, Mr. X, in a marital dispute under the circumstances he outlines. The attorney advises the Panel that Mrs. X alleges that he may not properly represent Mr. X because he represented both Mr. and Mrs. X when they adopted a child approximately four years ago. The attorney states that he has not conversed with Mrs. X since the adoption. He states that he has represented Mr. X since 1972.

The Panel believes that if Mrs. X is correct in her belief that the attorney had access to information from her which could influence the outcome of the marital dispute, then it would not be proper for the attorney to continue to represent Mr. X. Based on the information contained in the inquiring attorney's letter, however, the Panel finds that it is in not position to come to any conclusions as to whether such pertinent, privileged information has been conveyed.

The Panel finds that its "single party" procedure is not equipped to respond to a request for an opinion of this nature. The Panel believes that this type of contested fact situation must be resolved in an adversarial proceeding such as the one which the attorney states is presently pending in the Family Court.

Ethics Advisory Panel Rule 2, entitled "Jurisdiction," provides, that the Panel may decline to render an advisory opinion if any of seven specific circumstances exist.

Two of these circumstances are pertinent in the instant case.

(e) The request contains insufficient information on which the Panel can make a judgment.

and

(f) The request is not in the form required by Rule 3 hereof.

Rule 3 sets forth the required form for all advisory opinion requests. It provides, in pertinent part:

3. FORM OF REQUEST. A request shall be in writing, shall set out the factual situation in detail and, if possible, the applicable sections of the Code of professional responsibility. It shall also contain a representation by the inquirer that the factual situation described directly affects the inquirer's professional conduct and that the opinion of the panel will not affect interests of parties to any pending action. (Emphasis supplied)

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The Panel declines to exercise jurisdiction to respond to your inquiry in view of the requirements of Panel Rules 2 and 3.

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.