

DIGEST OF ETHICS ADVISORY PANEL
OPINION 89-20, REQUEST #67
Issued September 14, 1989

An attorney seeks Panel advice as to whether he may properly continue negotiating a settlement on behalf of a client under the circumstances he outlines. The attorney advises the Panel that he filed a complaint on behalf of a client seeking recovery for personal injuries sustained in an accident. The attorney states that he began negotiating on behalf of this client and two other clients who were injured in the same accident. The attorney advises the Panel that no complaint was filed on behalf of the other two clients. The attorney adds that the insurance adjuster handling the claim was given an open extension on answering the complaint. The attorney states that the statute of limitations has now run with regard to the two clients for whom no complaint was filed and asks whether it is proper for him to continue to negotiate on their behalf.

The attorney's negotiations with the insurance adjuster concerning the two clients for whom the statute of limitations has run would be governed by Rule 4.1. This rule provides:

In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of material fact or law to a third person; * * *

The Panel notes the expiration of the period of limitations is an affirmative defense. The Panel takes the position that the attorney may properly continue negotiations so long as he observes the requirements of Rule 4.1(a).

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.