

ETHICS ADVISORY PANEL
Opinion #93-24, Request #357
Issued June 2, 1993

The inquiring attorney has been appointed by the mayor of a municipality to a "special committee" which is to oversee the expenditure of a particular fund. The attorney is also a partner in a law firm which has several actions pending against the same municipality. The attorney asks whether his membership on this "special committee" conflicts with his firm's continuing representation of litigants adverse to the municipality or of private clients before the municipality or of private clients before the municipality's council or zoning or planning board. The attorney states that these other matters "in no manner relate to" the responsibilities of the "special committee."

In this case the inquiring attorney is a member of, and not the attorney for, a municipal commission with a relatively narrowly defined function. The inquiry is, therefore, distinguishable from situations in which a member of a law firm sits in a non-legal capacity on a body having broad powers over a municipality or non-profit corporation, such as a town council or a board of directors. See, e.g., Opinion 89-22 where the Panel ruled that an attorney whose partner sat on the board of directors of a hospital could represent an individual client in a suit adverse to the hospital, but only with the consent of the individual and the hospital.

This inquiry is also distinguishable from a situation in which a lawyer performing legal services for one town-related board seeks to appear before other town boards on behalf of clients with interests adverse to the town. See, e.g., Opinion 90-11, and Rules 1.7(a) and 1.13. As the inquiring attorney is not an attorney for the "special committee," the inquiring attorney's membership on that committee cannot result in a violation of Rule 1.7(a).

Despite the absence of an attorney-client relationship, a violation of Rule 1.7(b) may arise if the inquiring attorney's representation of a client may be "materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests." While the "third person" need not be a client and the "lawyer's own interests" need not involve a client, the Panel does not perceive in the circumstances of this inquiry that the lawyer's representation of clients in matters unrelated to the relatively narrow function of the "special committee" would be materially limited by the inquiring lawyer's membership on the "special committee."

The Panel has, in other situations involving attorneys serving as part-time public employees and officers, found guidance in Rule 1.11, entitled "Successive Government and Private Employment." Rule 1.11(a) states that:

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public officer or employee. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with provisions of this rule.

Rule 1.11 was intended to cover successive full-time, rather than concurrent part-time government service and private practice. However, the Panel believes that just as the Rule provides guidance as to that which an attorney may not do after he leaves government service, Rule 1.11 also provides guidance as to what an attorney may not do while he remains in government service.

It should be noted that Rule 1.11(a) allows a disqualified attorney to be screened from certain matters so that other members of his firm may pursue matters that the former public officer could not pursue. While the Panel has reservations about the effectiveness and appropriateness of any screening procedure where the screened partner is concurrently a public officer, the Panel believes that the rationale for allowing screening is relevant to the instant inquiry. That rationale, according to the comments, is that:

The provisions for screening and waiver are necessary to prevent the disqualification rules from imposing too severe a deterrent against entering public service.

According to the inquiry, the matters in which other members of the inquiring attorney's firm would represent interests adverse to the municipality "in no manner relate to" the sphere of responsibilities of the "special committee." The Panel does not

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perceive that the inquiring attorney's membership on the "special committee" could materially limit his firm's representation of other clients in unrelated matters (Rule 1.7(b)) or that the firm would be representing a client in connection with any matter in which the inquiring lawyer would participate as a member of the "special committee" (Rule 1.11(a)). Under these circumstances, the Panel concludes that other members of the inquiring attorney's firm are not precluded by the Rules of Professional Conduct from representing private clients in litigation against the municipality or from appearing on behalf of clients before the municipality's council or zoning or planning boards.

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.