

ETHICS ADVISORY PANEL
OPINION #93-83 REQUEST #425
Issued October 19, 1993

The inquiring attorney is a member of the law department of a municipality. He/she has defended the municipality and several municipal employees in a negligence lawsuit over a period of the past several years. During that time, the inquiring attorney acted as prosecutor against two (2) of the same employees for matters unrelated to the negligence lawsuit. Internal disciplinary action is pending against a third employee. Two (2) of the above-mentioned employees do not consent to their continued representation by the municipality's law department in the negligence lawsuit. The inquiring attorney asks whether the law department may continue to represent in the negligence lawsuit those employees who have been prosecuted by the law department, or who are in adverse positions to the municipality.

Rule 1.7 entitled "Conflict of Interest: General Rule" provides in pertinent part as follows:

Rule 1.7. Conflict 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.

Based on the facts of this inquiry, the Panel believes that the members of the law department may not continue to represent those employees it has prosecuted, or employees in adverse positions to the municipality, under Rule 1.7. In this case, the municipality's law department has a lawyer/client relationship with the municipality and the employees. The employees who have been prosecuted, or will be prosecuted, have interests directly adverse to the municipality. Thus, representation is not proper unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. Here, two of the affected employees do not consent, therefore, representation is impermissible by the municipality's law department.