

ADVISORY ETHICS OPINION 88-13

SYNOPSIS:

A lawyer, not an Assistant Attorney General, who regularly appears before a quasi-judicial board on behalf of a state agency, may represent the agency in litigation where the board is represented by the Attorney General's office and provided that the lawyer's previous contact with the Attorney General's office was on unrelated matters not involving any secrets or confidences.

FACTS:

In representing a State Agency client, an attorney routinely has extensive contact with members of the Attorney General's office, including some assistance in case preparation and access to the Attorney General's files. The lawyer represented the Agency at a hearing before a quasi-judicial board.

The Board's ruling following hearing is now before the Superior Court for a declaratory ruling. Since the Board is a statutory party, it is now represented by the Attorney General. The Agency opposes the position of the Board at the Superior Court level. The lawyer has had no contact with the Attorney General's files in this matter, and inquires whether on these facts continued representation of the agency is proper.

OPINION:

Since the inquiring attorney is not an Assistant Attorney General, the prohibitions discussed in Opinion No. 81-8, i.e. the Attorney General's office representing opposing State agencies in the resolution of disputes, does not apply here.

The general considerations of DR 5-105 require that a lawyer shall decline employment if "the exercise of his independent professional judgment" is likely to be adversely affected. There are no facts given which would indicate any problem in this area.

Since there was no lawyer-client relationship between the attorney and quasi-judicial board and since the lawyer states there has been no access to the Attorney General's files in this case, there is no potential problem as to the preservation or disclosure of any secrets or confidences.