

NEW HAMPSHIRE BAR ASSOCIATION  
Ethics Committee Advisory Opinion #1987-88/7  
**Conflicts of Interest: Serving on and Appearing Before a Land Use Board**  
January 12, 1988

**RULE REFERENCES:**

- \*Rule 1.11
- \*Rule 1.11(a)
- \*Rule 1.11(b)
- \*Rule 1.11A
- \*Rule 1.11A(b)(3)

**SUBJECTS:**

- \*Adverse Effect on Professional Judgment
- \*Conflict of Interest
- \*Consultation
- \*Government Representation
- \*Lawyer Official
- \*Public Officials

**STATUTORY REFERENCES:**

\*RSA 673:14

**ANNOTATIONS:**

A lawyer, also an alternate member of a zoning board of adjustment, may not appear before that same board, but may represent clients before other town boards. (Rule 1.11A)

Upon registration as a ZBA alternate member, an attorney has to observe those standards set forth in Rule 1.11, including non-participation in matter where the attorney participated or has obtained confidential information. (Rule 1.11)

**QUESTIONS:**

1. May the inquiring attorney appear before the zoning board of adjustment (of which the attorney is an alternate member)?
2. May the inquiring attorney represent clients before other town boards?
3. After resignation as an alternate member of the zoning board of adjustment, how long must the inquiring attorney wait before representing clients with respect to zoning board of adjustment matters?

**RESPONSE:**

The Committee assumes that the zoning board of adjustment, of which the inquiring attorney is an alternate member, does not appoint members to any other boards in the town before which the inquiring attorney might appear.

1. No. See Rule 1.11A (b)(3). Although it is not the purpose of the Committee to render opinions with respect to state statutes, the inquiring attorney may wish to refer to RSA 673:14.
2. The Committee believes this would not be prohibited, provided that the inquiring attorney's representation is in compliance with the applicable provisions of Rule 1.11A.
3. The *New Hampshire Rules of Professional Conduct* do not address this issue in terms of a temporal prohibition. Rather, Rule 1.11 sets forth the standards an attorney must observe. Essentially, they require an attorney to refrain from representing a private client in a zoning board of adjustment matter in which the attorney has "participated personally and substantially" as a member of that board, unless the board "consents after consultation." Rule 1.11(a); *see also New Hampshire Rules of Professional Conduct "Terminology"* at pp. 2-3 (defining "consultation"). Further, the inquiring attorney must refrain from representing a client where the attorney has obtained "confidential government information" while a member of the board, where the information relates to a person whose interests are adverse to the attorney's client and who would be materially disadvantaged by the attorney's use of the information. Rule 1.11(b).