

DIGEST OF ETHICS ADVISORY PANEL
OPINION #91-9, REQUEST #141
Issued February 20, 1991

An attorney seeks Panel advice as to whether the Rhode Island Rules of Professional Conduct prohibit a lawyer, in the trial of a cause, from advising or causing a person to secrete himself or leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness in the pending litigation.

Rhode Island Rule of Professional Conduct 3.4 provides in pertinent part:

FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; . . .

- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists . . .

The Panel takes the position that it is improper for an attorney to advise or cause a person to secrete him/herself or leave the jurisdiction for the purpose of making him/her unavailable as a witness in pending litigation. The Panel believes such conduct violates Rule 3.4 because it amounts to the unlawful concealment of the testimony of a witness which may have potential evidentiary value.

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.