

Digest of Ethics Advisory Panel
Opinion #91-23, Request #12?
Issued May 23, 1991

An attorney seeks Panel advice concerning the propriety of representing two individuals, A and B, who are co-defendants in a civil lawsuit. The attorney states that he/she has discovered evidence which would tend to exculpate client B, thus shifting all potential liability to client A. The attorney described this situation to the trial justice who believes these circumstances present a conflict of interest because the attorney represents both clients.

The applicable Rhode Island Rule of Professional Conduct is Rule ^{1.1}~~7.1~~, which provides in pertinent part:

(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

(b) A lawyer shall not represent a client if the representation of that 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, unless:

(1) the lawyer reasonably believes the the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The Panel takes the position that Rule 1.7 prevents the attorney from representing both client A and client B because their interests are so "materially adverse" that the attorney could not reasonably believe that representation of one client would not limit the attorney's ability to advance the interests of the other. The Panel believes its position renders client A's consent to the joint representation meaningless.

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.