

Digest of Ethics Advisory Panel
Opinion #91-31, Request #144
Issued May 23, 1991

An attorney seeks Panel advice as to whether the attorney may properly represent two clients, Mr. A and Ms. B under the following circumstances:

The attorney was contacted by Mr. A who requested the attorney prepare some real estate documents in order to effectuate a sale of ~~some~~ real estate from Mr. A's sister to Mr. A's daughter, Ms. B and her fiance, Mr. C. The attorney prepared a promissory note and mortgage papers. Copies of all documents were given to Mr. C by Mr. A so that Mr. C could review them with Mr. C's attorney.

The closing took place. At the closing, the note and the mortgage were signed and the settlement sheet was prepared. Ms. B and Mr. C. signed a certification that the figures on the settlement sheet were true and accurate.

Subsequently, Ms. B and Mr. C, who were engaged to be married, ended their engagement. A dispute arose between them as to what to do with the real estate they purchased jointly.

Mr. C filed an action in which he has alleged that the purchase price shown on the settlement sheet was not the true purchase price. Mr. A and Ms. B have requested that the inquiring attorney represent them in this action.

The Panel takes the position that the instant fact situation is governed by Rhode Island Rule of Professional Conduct 3.7, which provides in pertinent part:

Rule 3.7 Lawyer as witness

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:
- (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.

The Panel is of the opinion that the lawyer cannot represent Mr. A and Ms. B in this action because the attorney has knowledge which pertains to a material issue and, therefore, may be called as a witness in this action.

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.