

Digest of Ethics Advisory Panel
Opinion 91-36, Request #129
Issued June 25, 1991

An attorney seeks Panel advice concerning the following three ethical questions:

- 1) Whether an attorney may be required to submit to a deposition;
- 2) Whether the attorney-client privilege prevents an attorney from being deposed; and
- 3) Whether the attorney may properly continue to represent a particular client under the instant circumstances.

The facts are as follows:

The attorney represented client A for some 14 years in all matters, including corporate and personal. Client A provides a service to several municipalities pursuant to written contracts. For one of the municipalities, client A performed the contractual services in association with B company. Client A and B company are unrelated entities who have not formed a partnership. Client A and B company performed these contractual services as joint venturers.

Several years ago, the attorney billed both client A and B company for legal services rendered to them in defending a lawsuit. Client A and B company paid their respective shares of the legal fees.

The contract pursuant to which client A and B company performed municipal services ended in 1990. The municipality declared a desire to contract with client A only, leaving client A to form a separate agreement with B company for the rendering of services to the municipality. Thus, client A was in a position to enter into an agreement with B company, or anyone else, to render the municipal services.

Client A and B company were unable to reach an agreement. B company filed suit against client A and the municipality alleging breach of contract. B company now wishes to depose the attorney and proceed to trial.

The Panel takes the position that the attorney-client privilege, in and of itself, does not prevent an attorney from being deposed. The attorney-client privilege, which is contained in Rhode Island Rule of Professional Conduct 1.6, governs the type of information the attorney may disclose at a deposition. The Panel takes the position that the attorney's testimony at the deposition must be consistent with the obligations imposed by Rule 1.6. Rule 1.6 provides in pertinent part:

- (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized to carry out the representation . . .

The propriety of the attorney's continued representation of client A under the present circumstances is controlled by Rhode Island Rule of Professional Conduct 1.9, which provides in pertinent part:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation;

(b) use information relating to the representation to the disadvantage of the former client . . .

The Panel is of the opinion that the attorney cannot continue to represent client A unless the informed consent of B company is obtained.