

Digest of Ethics Advisory Panel
Opinion #91-39, Request #127
Issued July 18, 1991

An attorney seeks Panel opinion concerning his/her ethical obligations under circumstances in which the prosecutor and the court appear to be unaware of a recent change in a criminal statute which is adverse to the client defendant. The attorney asks whether he/she must reveal this recent change in the law to the prosecution and the court.

The Panel takes the position that the attorney's ethical obligation in these circumstances is to bring this recent change in the law to the attention of the court. The Panel bases its opinion on Rhode Island Rules of Professional Conduct 3.3, 8.4 and 1.2.

Rule 3.3, entitled "Candor Toward the Tribunal", provides in pertinent part:

(a) A lawyer shall not knowingly:

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, . . .

Rule 8.4, entitled "Misconduct", states in relevant part:

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . .

Rule 1.2, entitled "Scope of Representation", provides in pertinent part:

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the

relevant limitations on the lawyer's conduct.

The Panel is of the opinion that Rule 3.3 requires the attorney to disclose the recent change in the law to the court. Rule 8.4 states that a failure to do so involves dishonest conduct amounting to professional misconduct. Rule 1.2 prohibits the attorney from assisting the client in taking advantage of the court's apparent unawareness of the mandatory provisions of the new law.