

Digest of Ethics Advisory Panel  
Opinion #91-40, Request #159  
Issued July 18, 1991

An attorney seeks Panel advice concerning the ethical propriety of representing a real estate title insurance company in defending against the claims of banks or issuers of mortgages while simultaneously prosecuting actions, in the name of the banks, to remove the title or mortgage defect. The attorney seeks Panel confirmation that the attorney's client in such proceedings, where the name of the bank is merely contractually invoked for the purpose of prosecuting the action, is actually the insurance company and not the bank.

The Panel takes the position that Rhode Island Rule of Professional Conduct 1.7 governs this factual situations. Rule 1.7 provides:

Rule 1.7 Conflict of Interest: General Rule

(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 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 the attorney should obtain the informed consent of the bank in order to render the representation of the title insurance company proper under Rule 1.7. The Panel is of the opinion that although the bank's name has merely been invoked contractually for purposes of instituting the action, in which the insurance company is the actual client, the bank's consent should be obtained for the attorney's full protection.