

(0009J)

ETHICS ADVISORY PANEL
Opinion #92-83, Request #311
Issued November 18, 1992

An attorney seeks Panel advice with regard to the following circumstances. The attorney arranged a guardianship for a Rhode Island resident who sustained severe head injury in an out of state accident. The attorney filed the guardianship pleadings in the appropriate Probate Court. During the course of litigation, the attorney requested two special sessions in the Probate Court. After the resolution of this matter, the Probate Judge sent the attorney a bill for the time spent in these special sessions. The attorney advises the Panel that the attorney does not dispute the amount of the bill. However, the out of state attorney who represents the plaintiff in the personal injury case has questioned the propriety of paying the Probate Judge. The attorney asks whether it is ethically appropriate to pay the Probate Judge for the time spent at a special session.

As a threshold matter, the Panel declines to comment on the conduct of a Judge. The Probate Judge's conduct is controlled by or subject to the Canons of Judicial Ethics and not the Rules of Professional Conduct. The Panel does not comment on whether or not receiving money for special sessions is a violation of the Judicial Canons. The Panel understands this to be a common practice in Rhode Island Probate Courts and has not been determined to be illegal or unethical. Therefore, the lawyer participating in such practice could not be acting in violation of Rule 8.4(f). See, Rule 8.4(f) entitled "Misconduct" which states that it is professional misconduct for a lawyer to knowingly assist a judge in conduct that is a violation of applicable rules of judicial conduct or other law.