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ETHICS ADVISORY PANEL
OPINION #93-59, REQUEST #392
Issued August 25, 1993

An attorney is a licensed real estate broker and seeks Panel advice as to whether it is permissible for him/her to operate a real estate business from his/her office.

This inquiry raises the issue of law firms' involvement in ancillary businesses that provide non-legal services. The Panel notes that the propriety of these operations, and the necessity of addressing the same in the Model Rules of Professional Conduct, was debated at the 1991 Annual Meeting of the American Bar Association (ABA). The discussions of the debate focused on the inherent ethical dilemmas arising from this practice, including confidentiality and conflict of interest problems. The result was the adoption of Model Rule 5.7 by the ABA House of Delegates entitled "Provision of Ancillary Services."

Model Rule 5.7 prohibits law firms from providing non-legal services ancillary to the practice of law unless such services are provided by employees of the firm to clients of the firm in connection with the provision of legal services. Annotated Model Rules of Professional Conduct, at 483 (2nd ed. 1992).

As of this time, Rhode Island has not adopted Rule 5.7. However, the ancillary business topic is addressed by Rule 5.4(b) which provides that "[a] lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law." The Panel, therefore, cautions the inquiring attorney that although Rule 5.4 does not directly prohibit the practice he/she describes, his/her prospective action must comply with paragraph (b).

Rule 1.8(a) also applies to the inquiring attorney's ethical obligations in such a situation. The Rule states that:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

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Further, the Panel notes that Rule 1.7 is applicable to this inquiry which states in pertinent part as follows:

Rule 1.7. Conflict of Interest: General Rule.-

(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 interest, 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 implications of the common representation and the advantages and risks involved.

Rule 1.7(b) lists the lawyer's own interests as a source of influence which could impair the lawyer's exercise of independent professional judgment on behalf of a client. In this vein, the inquiring attorney must be mindful of the potential conflict of interest situations which may arise and his/her duty to proceed only under the conditions delineated in subsections (1) and (2) of paragraph (b).

In addition, the inquiring attorney is advised to consult the applicable regulations promulgated by the Rhode Island Department of Business Regulation with respect to this matter.

The Panel's guidance is restricted to interpretations of the Model Rules of Professional Conduct and does not extend to issues under the State Ethics Code or any other rules, regulations or laws that may have bearing on the issue raised by this inquiry.