

ETHICS ADVISORY PANEL
OPINION #94-23 REQUEST #481
Issued May 5, 1994

The inquiring attorney set forth the following situation. A Superior Court order directed A to convey a parcel of land to B on condition that B pay in full the outstanding mortgage on this parcel. B is unable to pay the mortgage in full. One of several lawyers involved in this matter suggested that he/she and the inquiring attorney lend B the funds to pay off the balance. The inquiring attorney states that neither A nor B is his /her client.

Rule 1.8(a) provides mandatory safeguards regarding business transactions between client and lawyer. The transaction must be fair and reasonable to the client. The client must be given the opportunity to seek the advice of independent counsel, the transaction must be disclosed in writing to the client and the client must consent to the transaction in writing.

The Panel believes that the inquiring attorney may lend B money because B is not the inquiring attorney's client. For a violation of Rule 1.8(a) to occur, an attorney-client relationship must exist.

While it is not clear from the inquiry, the inquiring attorney may be participating in the proposed loan with B's attorney in the matter. The Panel cautions that the inquiring attorney's "knowing assistance" of another attorney's violation of Rule 1.8 (a) would constitute a violation of Rule 8.4(a).