

ETHICS ADVISORY PANEL
OPINION #94-40 REQUEST #504
Issued July 27, 1994

The inquiring attorney represents a plaintiff in a personal injury matter. The attorney believes that his/her client's claim may be barred by a recent development in Rhode Island case law. Notwithstanding this information, an out-of-state insurance company made an offer of settlement. The attorney asks if the continuation of negotiations regarding a settlement with the insurance company would violate any ethical rules in light of the change in case law.

The Panel does not believe that the the attorney is in violation of an ethical rule in the continued negotiations with the insurance company. Rule 3.4 entitled "Fairness to Opposing Party and Counsel" prohibits a lawyer from the destroying or concealing of evidence, improperly influencing witnesses or obstructing discovery. Those factors are not present in this situation. In addition, Rule 4.1 entitled "Truthfulness in Statements to Others" requires a lawyer to be truthful while dealing with others on a client's behalf. However, a lawyer generally has no affirmative duty to inform an opposing party of statutory or case law adverse to his/her client's case. Since the inquiring attorney is not making false representations in this matter, Rule 4.1 is not being violated.