

Final

**RHODE ISLAND SUPREME COURT  
ETHICS ADVISORY PANEL  
OPINION NO. 97-01, REQUEST NO. 702  
Issued January 9, 1997**

**FACTS:**

The inquiring attorney represents the plaintiff in a personal injury case which is pending in superior court. The plaintiff recently died. The beneficiary of the decedent's estate has urged the inquiring attorney to settle the case. The inquiring attorney states that the beneficiary is aware that additional steps, such as probate proceedings and amending the complaint, must be taken in order to settle the claim on behalf of decedent's estate.

**ISSUE PRESENTED:**

The inquiring attorney asks whether he/she has an obligation to notify the defendants of the plaintiff's death prior to accepting an offer of settlement.

**OPINION:**

The Rules of Professional Conduct require that the inquiring attorney inform the defendants and the court of the plaintiff's death.

**REASONING:**

A preliminary question that the inquiring attorney must consider is the extent of his/her authority to enter into or to continue settlement negotiations after his/her client's death. The inquiring attorney has no client. Therefore he/she has no authority to proceed with negotiations without first obtaining the approval of a duly qualified personal representative. See Washington v. Caseyville Health Care Ass'n, Ill. App. Ct. 5th Dist, No. 5-96-0022, 10/11/96 (lawyer had no authority to settle case before representative of deceased client was appointed).

Turning to the ethical question of disclosure, the Panel believes that Rule 4.1 and Rule 3.3 govern the conduct of the inquiring attorney in this situation. Rule 4.1 entitled "Truthfulness in Statements to Others" provides:

- In the course of representing a client a lawyer shall not knowingly:
- (a) make a false statement of material fact or law to a third person; or
  - (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent

act by a client, unless disclosure is prohibited by Rule 1.6.



Misrepresentations can occur by failure to act. Comment to Rule 4.1.

Rule 3.3 which requires attorneys to act with candor toward tribunals provides in pertinent part:

- (a) A lawyer shall not knowingly:  
(1) make a false statement of material fact or law to a tribunal;

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(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

Failure to make certain disclosures to the court is equivalent to an affirmative misrepresentation. Comment to Rule 3.3.

The Panel is of the opinion that the inquiring attorney's failure to disclose the plaintiff's death to his/her adversary is equivalent to making a false statement of material fact under Rule 4.1(a). Similarly, an appearance by the inquiring attorney before the court without disclosing the plaintiff's death is tantamount to making a false statement to a tribunal under Rule 3.3.

The Panel therefore concludes that the inquiring attorney has an obligation to inform his/her adversary of the death of the client before proceeding with settlement negotiations. The inquiring attorney also has a duty to inform the court of the plaintiff's death when he/she next appears before the court on this matter. See Virgi v. Grand Trunk Warehouse & Cold Storage Co., 571 F. Supp. 507 (E.D. Mich. 1983) (attorney had obligation to inform court and opposing counsel of client's death); ABA Comm. on Ethics and Professional Responsibility, Formal Op. 95-397 (1995) (attorney has duty to disclose client's death to adversary and to court).





