

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion 98-08 Request # 741
Issued April 9, 1998**

Facts:

The inquiring attorney states that he/she is in the process of obtaining a Rhode Island real estate broker's license and establishing a real estate referral company which he/she will own and operate with another lawyer. The real estate referral company will be located in the same office as the inquiring attorney's law practice. Persons holding real estate licenses who are not affiliated with a real estate broker, referred to by the inquiring attorney as "inactive realtors," will display their licenses in the office of the real estate referral company and will conduct business with an active realtor who is employed by an outside real estate company. Realtor's commissions will be divided among the inquiring attorney's real estate referral company, the inactive realtor, the active realtor employed by the outside real estate company, and the outside real estate company.

Issue Presented:

The inquiring attorney asks the following questions: (1) May the inquiring attorney provide legal services to persons or entities in a real estate transaction in which the referral company shares the realtor's commission? (2) If the inquiring attorney has a conflict of interest, may he/she refer the matter to other attorneys in his/her building which is owned by the co-owner of the referral company? (3) May the inquiring attorney provide legal services in a real estate transaction in which the real estate referral company does not receive any portion of the realtor's commission which will be divided solely among the inactive realtor, the active realtor, and the outside real estate company?

Opinion:

(1) The Rules of Professional Conduct do not permit the inquiring attorney to provide legal services relating to a real estate transaction in which the inquiring attorney's real estate referral company shares the realtor's commission. (2) The inquiring attorney may refer those legal services to other attorneys in the building owned by a co-owner of the referral company provided that the other attorneys and the inquiring attorney do not present themselves as a firm and that the inquiring attorney does not receive a share of the legal fee. (3) Even where the real estate referral company does not receive a portion of the realtor's commission, the Rules do not permit the inquiring attorney to provide legal services relating to a real estate transaction in which the affiliated real estate agents and brokers receive a realtor's commission.

Reasoning:

At the outset the Panel states that its guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under chapter 20.5 of title 5 of the Rhode-Island General Laws or to any other rules, regulations, or laws that may have a bearing on the issues raised in this inquiry.

Questions one and three present the same ethical considerations, and the Panel therefore addresses them together. Attorneys may share office space with nonlawyers and may simultaneously engage in other businesses or professions, but must make the separate nature of their businesses clear to the public and must adhere to the Rules of Professional Conduct, particularly those rules pertaining to client confidentiality, conflicts of interest, advertising, direct contact with prospective clients, and the requirement that an attorney exercise independent judgment. See R.I. Sup. Ct. Ethics Advisory Panel Op. 96-29; R.I. Sup. Ct. Ethics Advisory Panel Op. 97-05.

Rule 1.7(b) is pertinent to questions relating to the legal representation of parties to a real estate transaction involving the inquiring attorney's real estate referral company or its affiliated brokers. It states:

- (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 interests, 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 the implications of the common representation and the advantages and risks involved

It is the opinion of the Panel that pursuant to Rule 1.7 the inquiring attorney may not provide legal services relating to real estate transactions in which the real estate referral company shares the realtor's commission. Even where the referral company waives or does not receive a share of the realtor's commission, the inquiring attorney is not permitted to provide the related legal services for a transaction if the referral company's affiliated real estate agents and brokers

receive a commission. This is so because the agents and brokers are not independent of the referral company. Indeed, under the proposed arrangement, their ability to conduct business is dependent on the existence of the inquiring attorney's referral company. The interrelationship between the referral company and the agents and brokers presents a substantial risk that the inquiring attorney's independent professional judgment will be compromised. There is also a significant risk that his/her representation of parties to a real estate transaction will be materially limited by his/her interests in the referral company or by his/her responsibilities to the company and to the associated agents and brokers. In the opinion of the Panel there could not exist a reasonable belief that the representation would not be affected. Therefore, consent should not be solicited. See Comment to Rule 1.7.

In Ethics Advisory Panel Op. 96-29 the Panel advised an attorney that the Rules of Professional Conduct do not permit an attorney to serve as the attorney for an individual in a real estate transaction in which he/she is the real estate broker on behalf of the individual. The reasoning set forth in Ethics Advisory Panel Op. 96-29 and in Ethics Advisory Panel Op. 96-26, a related opinion that addressed the ethical issues raised by an estate planning attorney who also is an insurance broker, is applicable to the instant request, and the Panel refers the inquiring attorney to those opinions.

In real estate transactions in which the inquiring attorney's real estate referral company or its affiliated agents and brokers receive a realtor's commission, the Rules of Professional Conduct permit the inquiring attorney to refer individuals or entities in need of legal services related to the transaction to other attorneys in the same office building, provided that the inquiring attorney and the other attorneys do not "...present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm" Comment to Rule 1.10; see Rule 1.10(A) (lawyers practicing in same firm shall not knowingly represent a client when one of them would be prohibited from doing so under Rules 1.7, 1.8(c), 1.9 or 2.2.) The attorney to whom the referral is made must independently determine in each case that he/she does not have a conflict of interest under the Rules of Professional Conduct before undertaking the representation. The inquiring attorney may not share the legal fees.

The Panel therefore concludes that the Rules of Professional Conduct do not permit the inquiring attorney to provide legal services relating to real estate transactions when the inquiring attorney's real estate referral company or its affiliated real estate agents and brokers receive a realtor's commission or a portion thereof. The inquiring attorney may refer those services to other attorneys in the building owned by a co-owner of the referral company provided that the other attorneys and the inquiring attorney do not present themselves as a firm and provided further that the inquiring attorney does not share the legal fees.

