

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 99-01, Request No. 752
Issued January 14, 1999**

Facts:

The inquiring attorney has a corporate client for which he/she provides legal services in the defense of both workers' compensation actions and tort liability actions. The attorney has recommended to the client that it settle a pending workers' compensation case and also a pending tort litigation. The client, however, has advised the inquiring attorney that it does not wish to settle the matters because the suggested settlement funds are earning enough investment income to justify the additional risk posed by proceeding with litigation.

Issue Presented:

The inquiring attorney asks whether it is a violation of Rule 3.2 for him/her to abide by the client's decision not to settle a pending matter for the reasons stated and to proceed with litigation.

Opinion:

Pursuant to Rule 1.2 of the Rules of Professional Conduct a lawyer must abide by a client's decision to settle a matter. To do so does not violate Rule 3.2 which otherwise requires a lawyer to expedite litigation.

Reasoning:

Rule 3.2 requires a lawyer to "make reasonable efforts to expedite litigation consistent with the interests of the client." The official commentary to Rule 3.2 provides in pertinent part:

The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

The decision to settle pending litigation is an issue relating to the objectives of the representation and is therefore a matter for the client to decide. See Rule 1.2. Rule 1.2 expressly requires an attorney to abide by a client's decision respecting settlement of a matter. In relevant part, Rule 1.2 states:

Rule 1.2. Scope of Representation. -

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter

Based on the facts as presented, the client's litigation matters will proceed in due course. There do not appear to be improper delays in the pending litigation which would violate Rule 3.2. The Panel therefore concludes that to implement the client's decision not to settle and to proceed with the litigation on the client's behalf is required by Rule 1.2 and is not a violation of Rule 3.2.