

DIGEST OF ETHICS ADVISORY PANEL
OPINION #90-3, REQUEST #74
Issued January 18, 1990

An attorney seeks Panel advice concerning his obligations, if any toward a client under the circumstances he describes.

The attorney advises the Panel that his client, Ms. A, and her father, Mr. X, lived together in a home owned by Ms. A and insured for \$100,000. A fire broke out in the house, injuring both Ms. A and Mr. X. Mr. X ultimately died of the injuries he sustained. Ms. A's daughter filed suit against Ms. A as administratrix of her grandfather, Mr. X's estate. Mr. X died without a will; his sole beneficiary was the defendant, Ms. A.

The attorney states that no settlement could be reached in the daughter's suit against Ms. A, and that a verdict was rendered against Ms. A which totalled approximately \$400,000. The attorney indicates that Ms. A's insurance company had reserved its rights from the outset with regard to its obligation to indemnify Ms. A, and that after the verdict was rendered the insurance company filed suit in federal court to determine the extent of its obligation.

The attorney states that after filing an appeal in the state court action he received a communication from Ms. A stating that she wanted him to drop the appeal and settle the case. The attorney indicates that these instructions concerned him because he was afraid that Ms. A did not realize that if he were to do as she asked, her insurance coverage would be placed at risk. The attorney states that he wrote to Ms. A explaining the potential risks in detail and asking her to sign and return a copy of his letter. The attorney also included some specific questions with regard to any settlement offers he might be able to negotiate. He states that Ms. A did not respond, even after several written reminders.

The attorney states that he recently received a letter from Ms. A discharging him as her attorney. He states that upon receiving this letter he again wrote to Ms. A concerning the problems which might arise from pursuing this course of action. The attorney adds that he told Ms. A that he would file a motion to withdraw from her case, but that the court would ultimately determine whether or not he would be allowed to withdraw from her case.

The attorney states that he is concerned that Ms. A does not understand the dangers inherent in what she has asked him to do. He asks what obligations he has to protect Ms. A under these circumstances.

Rule 1.2, entitled "Scope of Representation" provides, in pertinent part:

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued.

The Panel first notes that the detailed letters the attorney sent to Ms. A, coupled with the reminder notices sent to her satisfied the requirement set forth in Rule 1.2(a) that the lawyer "consult" with his or her client.

The Panel takes the position that an attorney may not superimpose his or her judgment on a client, no matter how praiseworthy the lawyer's motives may be. If the inquiring attorney feels that Ms. A's judgment is so flawed at this point that a question as to her competency arises, it is certainly permissible for him to bring as much information as he feels is necessary to the attention of the trial justice. No violation of the Rules of Professional Conduct arises under the circumstances he has outlined if he files a motion to withdraw.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.