

RHODE ISLAND SUPREME COURT ETHICS ADVISORY PANEL
GENERAL INFORMATIONAL OPINION NO. 8
Issued May 8, 1997

This general opinion discusses several issues regarding the Panel's procedures and the significance of the Panel's opinions. On occasion the Panel has received a request for reconsideration of a final opinion made by an attorney other than the inquiring attorney. Typically, the subject of the opinion impacts on pending litigation in which the parties desire to rely upon the Panel's decision.

Pursuant to Rule 2 of the Rhode Island Supreme Court Ethics Advisory Panel entitled "Jurisdiction" the Panel entertains requests from "any member of the Rhode Island Bar in good standing concerning his or her prospective conduct as an attorney." Under this same Rule the Panel may decline to render an advisory opinion for a variety of reasons including:

- (a) The request seeks an opinion about the conduct of a lawyer other than the inquirer.

Based on this rule, the Panel will not reconsider a final Panel opinion at the request of an attorney other than the inquiring attorney. If opposing counsel takes issue with an inquiring attorney's conduct, the matter may be pursued in the course of the pending litigation or separately before the Disciplinary Board. The purpose of rendering advisory opinions "is to assist lawyers in complying with the Rules of Professional Conduct." Supreme Court Rules Article V, Rule 9.1. The Panel is not a judicial body and has no rules or procedures for adversarial argument or fact finding.

Not infrequently, the request for an advisory opinion involves issues of evidentiary or substantive law in pending litigation. Rule 2(g) provides that the Panel may decline to render an advisory opinion if "[t]he opinion would require resolution of questions concerning substantive law outside the area of legal ethics and discipline." Rule 3 states that an "opinion by the Panel will not affect interests of parties to any pending action." While the Panel may rely upon or refer to substantive law in rendering an opinion concerning the Rules of Professional Conduct, the Panel will not undertake the resolution of issues or substantive law affecting parties to pending litigation. When the Panel advises an attorney as to his or her obligations under the Rules of Professional Conduct in the course of a pending proceeding, that advice is for the benefit of the inquirer and cannot bind or be imposed upon opposing counsel or the court.

Finally, attorneys should be mindful of the conditional nature of the protection offered by the Panel's opinion to the inquiring attorney. Rule 5 entitled "Effect of Advisory Opinion" states:

Provided no misrepresentation or omission of material fact is made by the inquiring attorney, the inquiring attorney who acts in accordance with the advisory opinion, shall be conclusively presumed to have abided by the Rules of Professional Conduct.

The Panel renders advice based upon the facts stated by the inquirer. The Panel's opinion affords no protection to an inquirer who misstates or omits material facts. The issue of the truthfulness and completeness of the facts may be properly raised by interested persons in judicial proceedings or before the Disciplinary Board.