

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 99-16, Request No. 786
Issued October 14, 1999**

Facts:

The inquiring attorney represents the co-guardians of two wards, a mother and her son. The wards are joint owners of a parcel of real estate. The inquiring attorney would like to purchase the real estate.

Issue Presented:

The inquiring attorney asks whether the Rules of Professional Conduct permit him/her to purchase the real estate from his/her clients.

Opinion:

The inquiring attorney may purchase the real estate from his/her clients, the co-guardians, provided that (a) he/she gives them written disclosure of the transaction; (b) he/she advises them to obtain independent counsel regarding the transaction; and (c) the co-guardians consent in writing to the terms of the transaction.

Reasoning:

Rule 1.8(a) is pertinent to this inquiry. It states:

Rule 1.8. Conflict of Interest: Prohibited Transactions. - (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto.

The inquiring attorney may purchase the real estate provided that he/she gives the co-guardians written disclosure of the transaction, and advises them to obtain independent legal counsel regarding all aspects of the sale of the real estate. Pursuant to Rule 1.8(a), the co-guardians must consent in writing to the terms of the transaction. A written purchase and sale agreement containing the terms of the conveyance would satisfy the consent requirement of the Rule. The transaction must be objectively fair to the co-guardians on behalf of the wards.

The Panel's guidance is limited to interpretations of the Rules of Professional Conduct and does not extend to any other rules, regulations, or laws that may have a bearing on the issues presented by this inquiry.