

Final

**Rhode Island Supreme Court Ethics Advisory Panel**  
**Opinion No. 2002-01 Request No. 841**  
**Issued January 10, 2002**

Facts:

A Rhode Island resident retained the inquiring attorney regarding a premises liability claim. The accident occurred in a foreign jurisdiction with a statute of limitations of two years. The inquiring attorney failed to file an action within the two-year period. The client has retained another attorney to pursue a legal malpractice action against the inquiring attorney.

The inquiring attorney believes there is a viable claim in Rhode Island under its three-year statute of limitations and the “interest-weighting approach.” The inquiring attorney contacted the malpractice attorney to ascertain whether the attorney’s representation includes the underlying premises liability along with the malpractice claim so that the client may be advised of the viable Rhode Island claim. The malpractice attorney responded that he/she represents the client solely with respect to the legal malpractice claim. The malpractice attorney prohibits the inquiring attorney from directly contacting the client concerning the premises liability claim.

Issues Presented:

1. The inquiring attorney asks if he/she has a continuing ethical obligation under Rule 1.3 or Rule 1.4 of the Rules of Professional Conduct to advise the client of the premises liability claim in Rhode Island.
2. The inquiring attorney asks whether it is a violation of the Rules of Professional Conduct if he/she contacts the client without the malpractice attorney’s consent.

Opinion:

1. The attorney-client relationship has been terminated. The inquiring attorney does not have a continuing obligation under Rule 1.3 (Diligence) or Rule 1.4 (Communication) to advise the client on the premises liability claim.
2. It would be a violation of Rule 4.2 if the inquiring attorney communicated with the client about the premises liability claim without the malpractice attorney’s consent.

Reasoning:

The obligations of diligence under Rule 1.3, and of communication under Rule 1.4, apply when there is an attorney-client relationship. In the instant inquiry, the client has retained other counsel to pursue a legal malpractice action against the inquiring attorney. The attorney-client relationship has been terminated. Therefore, the inquiring attorney has no ethical obligation to continue to advise the client regarding the premises liability claim.

For the inquiring attorney to contact the client, notwithstanding the malpractice attorney's prohibition against his/her contacting the client, is a violation of Rule 4.2, which states:

**Rule 4.2. Communication with Person Represented by Counsel.** - In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

The premises liability claim is the underlying claim in the legal malpractice matter, and in the Panel's view, is included in the "subject of the representation" of the client by the malpractice attorney. The malpractice attorney does not consent to the inquiring attorney's direct communication with the client on the premises liability claim. To persist in contacting the client for this purpose would violate Rule 4.2.