

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2005-04 Request No. 896
Issued April 14, 2005

An insurance company engaged the inquiring attorney to represent its insured, the defendant in a civil action arising out of a motor vehicle accident. The plaintiff alleges that she was injured while riding as a passenger in a vehicle operated by the insured, who is the plaintiff's mother. Having information that the insured would soon be leaving the United States to return to a foreign country and to take up permanent residence there, plaintiff's counsel scheduled to take the depositions of the plaintiff and the insured three days after service of process was made upon the insured.

The inquiring attorney promptly wrote a letter to the insured informing her that he/he was assigned by the insurance company to defend her, and requesting that the insured call the inquiring attorney to discuss representation. The letter was not returned to the inquiring attorney and the insured never contacted him/her. As a courtesy, counsel for the plaintiff scheduled a conference for the inquiring attorney and the insured at plaintiff's counsel's office, and also arranged for an interpreter to attend. The conference was cancelled. On the day before the scheduled depositions, the plaintiff and the insured advised plaintiff's counsel that the insured was not going to meet with the inquiring attorney, and that neither of them would attend their depositions.

In an effort to locate the insured, the inquiring attorney hired an investigator who advised the inquiring attorney that the insured no longer resides in Rhode Island. The insurer hired an international investigative service which could not locate the insured in the country where she was intending to take up permanent residence.

Meanwhile, the inquiring attorney secured numerous extensions of time to answer the complaint by stipulation with the plaintiff's counsel. The inquiring attorney also made special entries of appearance in the court where the lawsuit is pending for the specific purpose of obtaining a court order extending the time within which the insured could answer the plaintiff's complaint. An answer to the complaint is now due.

ISSUE PRESENTED:

The inquiring attorney, who has been assigned by an insurer to represent its insured, asks what his/her ethical obligations are when a complaint has been filed and served upon the insured, and the insured who would not meet with the inquiring attorney cannot now be located.

OPINION:

The Rules of Professional Conduct neither require nor permit the inquiring attorney to enter his/her appearance on behalf of the insured, to answer the complaint, or to represent the insured in the matter.

REASONING:

The attorney-client relationship is contractual in nature. Church vs. McBurney, 513 A.2d 22, 24 (R.I. 1983). The insured in this inquiry, despite efforts by the inquiring attorney, refused to meet with the inquiring attorney, and is now among the missing. Mindful that its jurisdiction is limited to interpreting the Rules of Professional Conduct, the Panel believes that an attorney-client relationship was not established between the inquiring attorney and the insured.

Rule 1 of the Rules of Professional Conduct entitled “Client-Lawyer Relationship” sets out ethical duties that lawyers owe to clients, and with few exceptions¹ assumes an attorney-client relationship. Duties of competence (Rule 1.1), diligence (Rule 1.3) and communication (Rule 1.4) are owed to clients, but lawyers owe no such duties to individuals who are not clients. The Panel therefore concludes that the inquiring attorney has no ethical obligation under the Rules to enter his/her appearance on behalf of the insured, to file an answer in the case, or to represent the insured in the matter.

If the Rules do not impose an obligation on the inquiring attorney to represent the insured under these facts, the issue arises as to whether it is permissible for the inquiring attorney to do so. The Panel is of the opinion that it is not permissible because the inquiring attorney could not comply with the requirements of Rule 1.2, Rule 1.4, and to some extent Rule 1.1.

Rule 1.2(a) states in pertinent part as follows.

(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. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Rule 1.4 states.

(a) When a lawyer has not regularly represented a client and has reason to believe that the client does not fully understand the nature of the attorney-client relationship and the expectations and obligations arising out of that

¹ For example, Rule 1.6 imposes obligations of confidentiality to persons who consult with lawyers about representation even if the lawyer does not take on the representation.

relationship, the lawyer shall take reasonable steps to inform the client of the nature of the attorney-client relationship before the representation is undertaken. Such disclosure should include what the lawyer expects of the client and what the client can expect from the lawyer. A lawyer may make such disclosure by providing the client with a copy of the statement of client's rights and responsibilities contained in Appendix 2 to these rules, or in any other manner sufficient to provide the client with a clear understanding of what services will be rendered by the lawyer and what the client's responsibilities are in order that the services can be performed effectively.

(b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(c) A lawyer shall explain to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.1 provides.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The Panel believes that representation of an individual such as the insured in this inquiry with whom the inquiring attorney has never met or spoken is imprudent, if not impossible. The inquiring attorney does not know the insured's objectives of the representation. See Rule 1.2. He/she cannot inform the insured of the nature of the attorney/client relationship, cannot keep the client reasonably informed about the lawsuit, and cannot explain what is necessary to permit the client to make informed decisions. See Rule 1.4. Competent representation and its requisite thoroughness and preparation are not feasible. See Rule 1.1. Believing these handicaps to be insurmountable barriers to effective advocacy, the Panel concludes that the Rules of Professional Conduct neither require nor permit the inquiring attorney to represent the insured under these facts.