

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2005-05 Request No. 898
June 3, 2005**

FACTS:

The inquiring attorney represents a client in a Workers' Compensation matter. The client currently receives a weekly compensation benefit. There is no pending litigation at the Workers' Compensation Court. The client recently informed the inquiring attorney that while he was receiving Workers' Compensation benefits he was convicted of a crime and was incarcerated at the ACI for six months. The client is presently serving an additional six months of home confinement.

The inquiring attorney states that pursuant to the Workers' Compensation statute, an employee is not entitled to workers' compensation for any period during which the employee is imprisoned as a result of a criminal conviction. The inquiring attorney notes that under State v. Quattrochi, 687 A.2d 78 (R.I. 1996) home confinement is a form of imprisonment. He/she further states that the Workers' Compensation statute is silent as to the obligations of the employee to disclose an imprisonment to the employer or insurer.

The inquiring attorney has advised the client that under the Workers' Compensation statute he is not entitled to receive ongoing benefits during his confinement, and that payments that were made during confinement must be credited back to the employer or insurer. The inquiring attorney urged the client to notify the employer or insurer. The attorney advised the client that the attorney would also notify them, but the client has not consented to disclosure by the inquiring attorney.

ISSUE PRESENTED:

The inquiring attorney asks whether he/she has an obligation to disclose his client's imprisonment to the employer or insurer.

OPINION:

Rule 1.6 prohibits the inquiring attorney from disclosing the client's imprisonment to the employer or insurer unless the client consents. If the client refuses to disclose the imprisonment to the employee or insurer, the inquiring attorney is prohibited by Rule 1.2 from taking any future action on behalf of the client that would further the client's fraudulent conduct. Termination of the lawyer-client relationship may be required.

REASONING:

Two rules apply to this inquiry, Rule 1.6 and Rule 1.2. Rule 1.6 states:

Rule 1.6. Confidentiality of Information. –

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may, but is not obligated to, reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Rule 1.2 states in pertinent part:

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

The Comment to Rule 1.2 is particularly instructive. In relevant part, it states as follows:

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required.

In the instant inquiry, the inquiring attorney has advised the client that the client is not entitled to receive workers' compensation benefits during periods of imprisonment, including home confinement. No doubt, the inquiring attorney has counseled the client on the fraud-related issues as well. The inquiring attorney also must advise the client about the limitations imposed by Rule 1.2 on the lawyer's conduct in continuing the representation should the client refuse to disclose the imprisonment to the employer or insurer.

If after such consultations the client decides against disclosure, the inquiring attorney is prohibited by Rule 1.2 from taking any future action on behalf of the client that would further the client's fraudulent conduct. Termination of the lawyer-client relationship may be required. Unless the client consents, Rule 1.6 prohibits the inquiring attorney from disclosing the client's imprisonment to the employer or insurer.

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under any other rules, regulations or laws, including the Workers' Compensation statutes, that may have bearing on the issues raised by this inquiry.