

DIGEST OF ETHICS ADVISORY PANEL
OPINION #21-4, REQUEST #132
Issued February 20, 1991

An attorney seeks Panel advice concerning the attorney's obligations under the Rhode Island Rules of Professional Conduct when a client who is charged with murder maintains his innocence, but feels it is in his best interests to plead guilty or nolo contendere to the charge. The attorney believes the client's reasons for wanting a plea arrangement are poor. The client is not uneducated and is not incompetent.

The client states that he is in possession of exculpatory evidence which is unobtainable from any other source. The client has described to the attorney the nature of this exculpatory evidence.

The attorney asks three questions: Would it be ethical for the attorney to allow the client to admit guilt or plead nolo contendere? May the attorney compel production of this evidence? If this evidence does exist, may the attorney ethically proceed to trial without the evidence or should the attorney move to withdraw for lack of cooperation by the client?

The following provision of the Rhode Island Rules of Professional Conduct are applicable to the fact situation presented for Panel review.

Rule 1.2 Scope of Representation

- (a) A lawyer shall abide by a client's decisions concerning the objective of representation . . . and shall consult with the client as to the means by which they are to be pursued . . . 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 1.6 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 . . .

Rule 1.16 Declining or Termination Representation

- . . . (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if . . .

(3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent.

The Panel is of the opinion that Rhode Island Rule of Professional Conduct 1.2 requires the attorney to abide by the wishes of the client if the attorney continues in the representation. The Panel takes the position that the attorney may seek to withdraw from representation of this client under Rule 1.16(b)(3) if the attorney considers the client's objectives repugnant or imprudent. The Panel believes its position renders moot the other questions posed by this inquiry.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.