

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 98-10 Request No. 744
Issued April 9, 1998**

Facts

The inquiring attorney states that he/she was retained by an insurance company to represent its insured in a tort action. The insured has retained a second attorney to represent him/her with respect to liability in excess of the policy limits. The insured has asked the inquiring attorney for copies of letters that the inquiring attorney wrote to the insurance company's adjuster which contain the inquiring attorney's mental impressions and legal analysis of liability, damage, and settlement negotiations in the tort action.

Issue Presented

The inquiring attorney asks whether he/she has an obligation under the Rules of Professional Conduct to provide the insured with the documents he/she has requested.

Opinion

Yes. The insured is the inquiring attorney's client, and as such the inquiring attorney has obligations under Rule 1.4 to keep him/her reasonably informed and to comply promptly with reasonable requests for information.

Reasoning

A lawyer hired by an insurance company to represent its insured must represent the insured as his/her client with undivided loyalty. See ABA Standing Comm. on Ethics and Prof. Responsibility, Formal Op. 96-403 (1996); Florida Bar Prof. Ethics Comm. Op. 97-1 (1997). While the insurance contract sets forth the rights and obligations as between the insured and the insurer, that contract does not define the ethical responsibilities of a lawyer to his/her client or clients. ABA Standing Comm. on Ethics and Professional Responsibility, Formal Op. 96-403 (1996). If a lawyer who is hired and paid by an insurer to defend an insured represents the insured, whether alone or jointly with the insurer, the Rules of Professional Conduct govern the lawyer's ethical obligations to the client-insured.¹

¹ In the instant request, the inquiring attorney makes clear that he/she has been retained to represent the insured. Whether the inquiring attorney also represents the insurer is not fundamental to this inquiry.

The Comment to Rule 1.7 (Conflict of Interest: General Rule) states:

A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client.

Therefore, pursuant to Rule 1.7, a contractual relationship, and an attorney-client relationship if one exists, between an insurer and a lawyer retained to represent its insured must not compromise the lawyer's loyalty and other obligations to the client-insured.

Rule 1.4 requires lawyers to keep clients reasonably informed and to comply with reasonable requests for information. It states:

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

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

In the instant inquiry, the client-insured has requested copies of letters written by his/her attorney and containing information that pertains to his/her defense of the tort action, including the attorney's legal analysis of liability, damages, and settlement. The Panel believes that the request is reasonable, notwithstanding the fact that they were directed to the insurer's adjuster and not to the client-insured. "The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation." Comment to Rule 1.4. The Panel therefore concludes that the inquiring attorney has an ethical obligation to provide the client-insured with the documents he/she has requested.