

Final

RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No.2009-01 Request No. 959
Issued April 9, 2009

FACTS:

The inquiring attorney was a part-time assistant solicitor for a municipality for many years until December 2008. During that time, the inquiring attorney was the prosecutor in district court for misdemeanor complaints filed by the municipality's police department. He/she was also the prosecutor for housing matters in municipal court. He/she now has a private law practice and would like to represent individuals charged by the municipality's police department before district court, and individuals cited for housing matters before the municipal court.

ISSUE PRESENTED:

The inquiring attorney asks whether he/she may represent individuals charged by the municipality's police department before the district court, and individuals cited for housing matters before the municipal court.

OPINION:

The inquiring attorney may represent clients before the municipal court in connection with municipal housing matters, and clients charged by the municipal police department, provided that the matters are not matters in which the inquiring attorney participated personally and substantially as an assistant solicitor.

REASONING:

Rule 1.11 of the Rules of Professional Conduct is applicable to this inquiry. In pertinent part it states:

Rule 1.11. Special conflicts of interest for former and current government officers and employees. (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

- (1) is subject to Rule 1.9(c); and
- (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or

employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(e) As used in this Rule, the term “matter” includes:

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Former Rule 1.11 prohibited a lawyer who had been employed by a government office or agency from representing a private client before that government office or agency for a period of one year following the termination of such employment. The one year prohibition contained in former Rule 1.11 was not retained in the current Rules of Professional Conduct which were adopted by Rhode Island Supreme Court Order dated February 16, 2007, and which became effective April 15, 2007.

Rule 1.11(a)(1) imposes on the inquiring attorney the obligations set forth in Rule 1.9(c) which states:

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

In addition, Rule 1.11 (a)(2) prohibits the inquiring attorney from representing clients in connection with matters in which he/she participated personally and substantially while an assistant solicitor of the municipality, unless the municipality gives its consent.

The Panel concludes that the inquiring attorney may represent clients in municipal court in connection with municipal housing matters, and clients who are charged by the municipality's police department, provided that the matters are not matters in which the inquiring attorney participated personally and substantially as an assistant solicitor for the municipality.

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues of the State Ethics Code or any other rules, regulations or laws that may have a bearing on the issue raised by this inquiry.