

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2012-03
Issued February 9, 2012

FACTS

The inquiring attorney is a recently hired in-house attorney for a number of affiliated companies. On his/her first day in the position, the inquiring attorney met with the manager of one of the companies. The manager, an assistant manager, and the company had been subjects of a sexual harassment complaint filed by an employee with the Rhode Island Commission for Human Rights. The Human Rights Commission has ruled that the complainant has ninety days to file a complaint in Superior Court. The Commission matter was handled by the company's general counsel and by another in-house attorney. The in-house attorney who was the inquiring attorney's predecessor, had entered an appearance before the Human Rights Commission to represent all of the respondents, including the manager and the company. The manager and assistant manager no longer work at the company for reasons unrelated to the sexual harassment claim.

The employee who filed the complaint at the Human Rights Commission has filed suit in Superior Court against the company, its former manager, and its former assistant manager. The company's general counsel and the inquiring attorney have determined that having represented the former manager in the matter before the Human Rights Commission, company counsel could not represent the company in the related Superior Court action. The company has hired outside counsel to represent it in the Superior Court matter.

The inquiring attorney states that at his/her meeting with the manager, he did not substantively advise the manager. However, he/she asked questions, and took a single page of handwritten notes. Also, the manager submitted to the inquiry attorney a timeline consisting of several pages. The meeting took place in a conference room with no one else present. The inquiring attorney further states that he/she believes both the company, and the manager, were his/her clients.

The inquiring attorney has given a subset of the legal file on the sexual harassment matter to company management to forward to its outside attorney. However, he/she has not forwarded his/her own handwritten notes from the meeting with the manager, or the timeline the manager had submitted to him/her. The inquiring attorney states that he/she knows that before leaving the company, the manager told company management much of the information that is in the timeline.

ISSUE PRESENTED

The inquiring attorney asks whether it is permissible for him/her to disclose his/her meeting notes and the manager's timeline relating to the sexual harassment claim to the outside attorney who represents the company in the related Superior Court action.

OPINION

The manager is the inquiring attorney's former client. Therefore, Rule 1.6 prohibits the inquiring attorney from revealing his/her notes, the manager's timeline, or any information which the inquiring attorney generated or acquired during meetings with his/her former client to the company's outside attorney, or to company management, without the manager's consent.

REASONING

Rule 1.13 of the Rules of Professional Conduct provides that a lawyer employed or retained by an organization represents the organization. The Rule also provides that such a lawyer may also represent the organization's constituents, including employees. In pertinent part, Rule 1.13 states:

Rule 1.13. Organization as client. (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

This inquiry highlights the importance of an organization's counsel's obligation to clarify his or her role before counsel takes on the representation of both the organization and its constituent in the same matter. Counsel, at the outset, has the obligation to make clear who his or her client is, to determine and explain potential adverse interests between the constituent and the organization, and to advise the constituent that in light of potential adverse interests, the constituent may wish to obtain independent representation. See Rule 1.13, Comment [10].

In the instant inquiry, general counsel and the inquiring attorney have determined that the manager is a former client. The inquiring attorney has stated that in-house counsel entered his or her appearance in the Human Rights Commission matter on behalf of all respondents, including the manager. General counsel and the inquiring attorney have concluded that having represented the manager in the Human Rights Commission matter, company counsel could not represent the company in the Superior Court action. The manager had good reason to believe that at the time of the meeting with the inquiring attorney, the inquiring attorney was his attorney for the sexual harassment claim. With that belief came a reasonable expectation of loyalty and confidentiality. The inquiring attorney himself/herself has stated that he/she viewed the manager as his/her client.

Rule 1.6 entitled "Confidentiality of information" prohibits a lawyer from revealing information relating to the representation of a client, unless the client consents. The Panel concludes that absent the manager's consent, the inquiring attorney is prohibited from disclosing his/her notes, the manager's timeline, or any information which the inquiring attorney generated or acquired during the meetings with his/her former client, the manager, to the company's outside attorney or to company management.