

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2012-07
Issued: September 10, 2012

FACTS

The inquiring attorney recently left the offices of Rhode Island Legal Services and is now in private practice. While employed at Rhode Island Legal Services, the inquiring attorney represented indigent parents charged in Family Court with dependency, neglect or abuse, or termination of parental rights. In addition to having his/her own caseload, the inquiring attorney supervised several other attorneys.

Since leaving Rhode Island Legal Services, the inquiring attorney has been approved for and added to the list of attorneys who are eligible for court-appointment to represent indigent clients in Family Court. The inquiring attorney states that he/she plans to seek court appointments to represent clients in D.C.Y.F. cases, as well as being appointed as guardian-ad-litem in both D.C.Y.F. and domestic cases, and to take cases in other domestic matters. The inquiring attorney states that he/she will not represent a client whose D.C.Y.F. case would involve direct opposition to a parent who was represented by the inquiring attorney or by a supervised Rhode Island Legal Service's attorney, and about whom the inquiring attorney had acquired specific knowledge. He/she also states that he/she would not accept appointments as a guardian-ad-litem for children in such cases. The inquiring attorney is concerned, however, about cases handled by subordinate attorneys at Rhode Island Legal Services about which he/she acquired no specific knowledge, or about which he/she has no specific memory.

ISSUE PRESENTED

The issue presented by this inquiry is whether it would be a conflict of interest for the inquiring attorney, a former Rhode Island Legal Service's supervising attorney, to represent a person whose interests were adverse to a client who was represented by a Rhode Island Legal Service's lawyer while the inquiring attorney was the lawyer's supervising attorney.

OPINION

Pursuant to Rule 1.9(b), the inquiring attorney is prohibited from representing a person in the same or a substantially related matter in which another Rhode Island Legal Service's lawyer, while under the supervision of the inquiring attorney, represented a client whose interests are materially adverse to that person and about whom the inquiring attorney actually had acquired protected information that is material to the matter.

REASONING

A determination of whether a conflict of interest exists must be made on a case-by-case basis, and must be based on specific facts. The inquiring attorney has not presented a specific set of facts to the Panel, and therefore, the Panel's guidance for this inquiry is general in nature.

Paragraph (b) of Rule 1.9 entitled "Duties to former clients" applies to this inquiry. Paragraph (b) states:

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client.

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

Paragraph (b) of Rule 1.9, added to the former-client rule in 2007, narrowed the scope of imputation of conflicts of interest when lawyers move from one law firm to another. Specifically, under paragraph (b)(2), even where a prospective client's matter and the matter of a former law firm's client are the same or a substantially related matter (Rule 1.9(b)), and where also the interests of the prospective client and the former firm's client are adverse (Rule 1.9(b)(1)), a lawyer would not have a conflict of interest unless he or she also had acquired protected information that is material to the matter. Paragraph (b), therefore, operates to disqualify a lawyer only when the lawyer has actual knowledge of information protected by Rules 1.6 and Rule 1.9(c). Rule 1.9, Comment [5].

The test for paragraph (b)(2) is not whether an attorney remembers the case, the client, or the specific facts of the case. Rather, the requirement of (b)(2) is met if the

lawyer had actually acquired material information while at the former law firm. Due diligence is required.

In the instant inquiry, the inquiring attorney supervised several attorneys in addition to handling his/her own caseload. The inquiring attorney is concerned about whether the conflicts of interest of those attorneys are per se imputed to him/her because he/she supervised them. Comment [6] to Rule 1.9 is instructive. The Comment states:

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually serviced but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

The Panel is of the opinion that there is a reasonable inference that the inquiring attorney was privy to information about clients who were represented by lawyers whom the inquiring attorney supervised. Unless the presumption of such knowledge is rebutted and the inquiring attorney can demonstrate that he/she had acquired no protected material information about a supervised attorney's case, the inquiring attorney would have a conflict of interest if the other elements of Rule 1.9(b) are also met; and the inquiring attorney should decline the prospective client's representation.

Accordingly, the Panel concludes that the inquiring attorney is prohibited from representing a person in the same or a substantially related matter in which another Rhode Island Legal Service's lawyer, while under the supervision of the inquiring attorney, represented a client whose interests are materially adverse to that person, and about whom the inquiring attorney actually had acquired protected information that is material to the matter.

