

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2014-05
Issued July 10, 2014**

FACTS

The inquiring attorney represented an individual who was the attorney-in-fact under a power of attorney. The inquiring attorney states that the sole purpose of the representation was to assist the individual in his/her capacity as the attorney-in-fact for the principal, an elderly individual. Specifically, the inquiring attorney helped the attorney-in-fact to understand his/her legal rights and duties as such; and assisted the attorney-in-fact to perform the legal duties and to exercise the legal rights of an attorney-in-fact, to the extent that a lawyer's services were relevant to those duties and rights. The attorney-in-fact and the inquiring attorney entered into a retainer agreement. The power-of-attorney was subsequently terminated, and a guardian was appointed for the elderly individual by a probate court. The attorney-in-fact is not the appointed guardian.

The guardian has asked the inquiring attorney for copies of documents relating to the inquiring attorney's representation of the attorney-in-fact, including copies of the retainer agreement, correspondence between the inquiring attorney and the attorney-in-fact, correspondence the inquiring attorney sent to third parties, and billing statements pertaining to the representation of the attorney-in-fact. The inquiring attorney asks whether his/her obligation of confidentiality prohibits him/her from complying with the guardian's request.

ISSUE PRESENTED

May the inquiring attorney, who represented the attorney-in-fact for an elderly individual, provide copies of documents relating to the representation to the subsequently appointed guardian of the elderly individual?

OPINION

Rule 1.6 of the Rules of Professional Conduct permits the inquiring attorney to comply with the request of the elderly individual's guardian for copies of documents relating to the inquiring attorney's representation of the former attorney-in-fact for the elderly individual.

REASONING

Rule 1.6, entitled “Confidentiality of information” states as follows:

Rule 1.6. Confidentiality of information. (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(3) to secure legal advice about the lawyer's compliance with these Rules; or

(4) to comply with other law or a court order.

The inquiring attorney submitted a copy of the document creating the power-of-attorney. It is a statutory power-of-attorney pursuant to Rhode Island General Laws §18-16-1 et seq., entitled “Rhode Island Short Form Power of Attorney Act” (hereinafter, the Act). The Panel has reviewed the Act. For each matter about which an attorney-in-fact has authority to act on behalf of the principal under the Act, the principal expressly authorizes the attorney-in-fact as follows:

“To hire, to discharge and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent deems this action to be desirable for the proper execution by him or her of any of the powers described in this section, and for the keeping of needed records of these actions;...” G.L. §§18-16-3(11), 4(9), 5(12), 6(16), 7(9), 8(12), 9(8), 10(6), 11(4).

According to the inquiring attorney, the sole purpose of the representation was to advise and assist the attorney-in-fact relative to his/her rights and obligations under the power-of-attorney. The inquiring attorney acknowledges that his/her advice and assistance was for the benefit of the principal, the elderly individual. In retaining the inquiring attorney, the attorney-in-fact was acting for, in the place of, and on behalf of the principal, consistent with the Act’s provisions which expressly authorize the attorney-

in-fact to retain and to compensate an attorney for the proper execution of the powers granted under the power-of-attorney. Thus, information relating to the representation of the attorney-in-fact in this inquiry, for all intents and purposes is information that relates to the elderly individual, the principal. As such, the Panel is of the opinion that Rule 1.6 would have permitted the inquiring attorney to reveal to the principal information relating to the representation of his/her attorney-in-fact. The Panel believes that Rule 1.6 permits the inquiring attorney to also reveal that information to the court-approved guardian of the elderly individual, formerly the principal, under the power-of-attorney that is the subject of this inquiry.

Accordingly, based on the facts as presented, the Panel concludes that Rule 1.6 permits the inquiring attorney to comply with the request of the elderly individual's guardian for documents relating to the inquiring attorney's representation of the former attorney-in-fact for the elderly individual.