

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2014-07
Issued August 1, 2014**

FACTS

The inquiring attorney is the assistant solicitor for a municipality. His/her duties include attendance at the meetings of the municipality's planning board and its zoning board of review as their legal advisor. An applicant appeared before the planning board seeking approval of a major land department project. The planning board denied the master plan application for the project. The applicant appealed the planning board's decision to the zoning board of review, acting in its capacity as the planning board of appeals.

The inquiring attorney represented the planning board at the initial application stage. The municipality retained special counsel to advise the planning board of appeals for the applicant's appeal. The planning board of appeals upheld the decision of the planning board denying the master plan application.

The applicant has appealed the decisions of the planning board and the planning board of appeals to the Superior Court. The municipality wants the inquiring attorney to represent it in the lawsuit to defend the decisions of the planning board and the planning board of appeals. The applicant's counsel has asserted that it would be a conflict of interest for the inquiring attorney to defend the decisions of the municipality. Prior to entering his/her appearance in the case, the inquiring attorney seeks an opinion from this Panel about whether it is a conflict of interest for him/her to represent the municipality in the case.

ISSUE PRESENTED

May the inquiring attorney represent the municipality, its planning board, and the planning board of appeals which upheld the decision of the planning board, in an applicant's Superior Court appeal?

OPINION

Yes. Rule 1.7 permits the inquiring attorney, who is an assistant solicitor, to represent the municipality, its planning board, and its planning board of appeals, in an applicant's Superior Court appeal from the decisions of the planning board and the planning board of appeals.

REASONING

Rule 1.7 of the Rules of Professional Conduct is pertinent to this inquiry. The Rules states as follows:

Rule 1.7. Conflict of interest: Current clients. (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

The Panel has reviewed the section of the municipality's charter relating to the duties of a solicitor. Pursuant to the municipality's charter, the solicitor shall appear for the municipality in all actions and proceedings brought by or against the municipality, its agencies, officers, or departments. The Panel is of the opinion that the facts of this inquiry do not give rise to a conflict of interest which would prohibit the proposed representation of the municipality, its planning board, and its planning board of appeals.

The planning board denied the master plan application. The planning board of appeals upheld the planning board's decision. The interests of the two boards in the applicant's matter are not adverse. Therefore, there is no conflict of interest under Rule 1.7(a)(1). Neither is there a conflict of interest under Rule 1.7(a)(2), as there is not a significant risk that the inquiring attorney's representation of the planning board will materially limit the representation of the planning board of appeals, or vice versa.

Finally, neither the interests of the planning board nor those of the planning board of appeals are adverse to the municipality under these facts.

Accordingly, the Panel concludes that Rule 1.7 permits the inquiring attorney to represent the municipality, its planning board, and its planning board of appeals, in the Superior Court appeal from the decisions of the planning board and of the planning board of appeals which upheld the decision of the planning board.

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

Lise J. Gescheidt did not participate.