

**Final**

**Rhode Island Supreme Court  
Ethics Advisory Panel Op. 2016-01  
Issued March 10, 2016**

FACTS:

The inquiring attorney and his/her law firm (Law firm A) have been retained by an insurance company to represent its insured, which is the owner and lessor of a vehicle that was involved in an accident. The plaintiff subrogor in the case is represented by a law firm (Law firm B) that Law firm A currently represents in an unrelated matter. The inquiring attorney states that the attorney from Law firm B who represents the plaintiff subrogor is not involved in the unrelated matter. The inquiring attorney seeks the Panel's advice about whether it is a conflict of interest to represent the insured under these circumstances.

ISSUE PRESENTED:

The inquiring attorney asks whether it is a conflict of interest under Rule 1.7 of the Rules of Professional Conduct to represent the insured when his/her law firm is also currently representing opposing counsel's law firm in an unrelated matter.

OPINION:

The inquiring attorney and his/her law firm must make a good faith professional evaluation of relevant factors to decide whether under Rule 1.7(a)(2) the concurrent representation will present a significant risk that the representation of either client will be materially limited. If they conclude that such a risk exists, the inquiring attorney and his/her law firm may represent the insured if they further comply with paragraph (b) of Rule 1.7.

REASONING:

The Rule of Professional Conduct that applies to this inquiry is Rule 1.7 entitled "Conflict of interest: Current Clients." It 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.

A firm of lawyers is essentially one lawyer for purposes of the rules governing conflicts of interests under Rule 1.7. That the lawyer from Law firm B who represents the plaintiff subrogor is not involved in the unrelated matter is not relevant to a conflicts analysis under Rule 1.7. See Rule 1.10 "Imputation of conflicts of interests: General rule."

The facts of this inquiry must be analyzed under the second prong of Rule 1.7(a). Under Rule 1.7(a)(2), there would exist a concurrent conflict of interest where there is a substantial risk that Law firm A's representation of the insured (a) will be materially limited by its responsibilities to Law firm B, (b) will materially limit its responsibilities to Law firm B, or (c) will be materially limited by its own personal interests in, for example, continuing to represent Law firm B in future matters.

The risk must be substantial; the limitation on either representation must be material. Whether and to what extent a concurrent representation will be thus affected will depend on the inquiring attorney's good faith evaluation of various factors applied to specific facts that are unknown to the Panel.

Faced with a similar inquiry in Maine Professional Ethics Commission Op. 205 (2011), the Maine ethics commission stated:

These factors may include

1. The relative importance of the matter to the represented lawyer

2. The relative size of the fee expected by the representing lawyer
3. The relative importance to each lawyer and to each lawyer's client of the matter involving the third party clients
4. The sensitivity of each matter
5. The substantial similarity between the subject matter or issues of the two representations, and
6. The nature of the relationship of one lawyer to the other and of each lawyer to his third party client. (Citation omitted)

Id. at 2-3.

The Maine commission recognized that these factors are not exhaustive, but provide some direction to attorneys about the analysis required to comply with Rule 1.7(a)(2). Id. at 3.

The Panel agrees with Maine's approach, and advises the inquiring attorney and Law firm A to consider the above factors, along with others known to them that may apply. If after doing so, the inquiring attorney concludes that a concurrent conflict of interests exists as to either client, the inquiring attorney and Law firm A may represent the insured, but only if there is a reasonable belief that they can provide competent and diligent representation notwithstanding the risk, they obtain the informed, written consent of each affected client, and they otherwise comply with Rule 1.7(b).

The Panel concludes that the inquiring attorney and his/her law firm must make a good faith professional evaluation of relevant factors to decide whether, under Rule 1.7(a)(2), the concurrent representation will present a significant risk that the representation of either client will be materially limited. If they conclude that such a risk exists, the inquiring attorney and his/her law firm may represent the insured if they further comply with paragraph (b) of Rule 1.7.