

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2016-02
Issued April 28, 2016**

FACTS

The inquiring attorney recently returned to private law practice in the real estate and commercial litigation department of a law firm. Before joining the law firm, he/she was an assistant city solicitor. As an assistant solicitor, the inquiring attorney prosecuted liquor, entertainment, and other license violations on behalf of the city before the board of licenses. He/she represented the city in appeals from the board's decisions. The inquiring attorney also represented the city in tax appeal litigation, personal injury cases, and as lead prosecutor before the city's housing court regarding violations of the city's various codes and zoning ordinances. While the foregoing represented the majority of the inquiring attorney's assignments, from time to time, he/she attended meetings of the city's zoning board of review and other boards and committees. The inquiring attorney has presented various hypothetical scenarios for the Panel's consideration.

ISSUE PRESENTED

The inquiring attorney, a former assistant city solicitor, asks whether he/she may now represent private clients before the city's various boards, agencies, and courts, before which he appeared on behalf of the city.

OPINION

When deciding the propriety of client representation in matters relating to the city and in matters to be litigated before the city's boards, commissions, or courts, the inquiring attorney and lawyers in his/her law firm are subject to Rule 1.11(a), (b), (c) and (e).

REASONING

The inquiry lacks specific facts. Therefore the Panel is limited to providing general guidance in response to this inquiry. The inquiring attorney is a former government employee. Therefore, Rule 1.11 entitled "Special conflicts of interest for former and current government officers and employees," applies.

Rule 1.11. Special conflicts of interest for former and current government officers and employees. (a) Except as law may

otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Pursuant to Rule 1.11(a), the inquiring attorney may not represent a private client in a matter in which he/she participated personally and substantially while he/she was an assistant city solicitor. “Matter” is defined broadly, and includes not only cases which the inquiring attorney litigated on behalf of the city, but also matters for which he/she provided legal advice to the city’s boards, commissions, and other public bodies. A disqualification under Rule 1.11(a) can be waived by the city if the city gives its informed consent, confirmed in writing.

If the inquiring attorney is disqualified from representing a private client under Rule 1.11(a), the disqualification is imputed to other lawyers in the law firm unless the inquiring attorney is screened from participating in the client’s matter, derives no fee from the matter, and written notice of the representation is given to the city.

Further, if the inquiring attorney has information known to him/her to be confidential government information which was acquired about a person when he/she was an assistant city solicitor, Rule 1.11(c) prohibits him/her from representing a private client whose interests are adverse to that person where the information could be used to that person’s material disadvantage. Unlike a conflict that arises from participation in a matter under Rule 1.11(a), a conflict that results from the possession of confidential government information cannot be waived. Screening is permitted.

Rule 1.11 no longer contains the revolving-door provision of the former rule, which prohibited a lawyer who was formerly employed by a government office or agency from representing a private client before that government office or agency for one year after termination of such employment. The inquiring attorney is advised, however, to consult other law, such as the State’s Code of Ethics, for similar limitations.

The Panel concludes that when deciding the propriety of client representation in matters relating to the city, and in matters to be litigated before the city’s boards, commissions, or courts, the inquiring attorney and lawyers in his/her law firm are subject to Rule 1.11(a), (b), (c) and (e). 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.