

Final

Rhode Island Supreme Court
Ethics Advisory Panel Opinion No. 2001-02, Request No. 821
Issued March 8, 2001

Facts

The inquiring attorney, joined by two other attorneys, seeks Panel advice about whether an office-sharing arrangement triggers the disqualification provisions of Rule 1.10 of the Rules of Professional Conduct. Two of the attorneys are solicitors for a municipality. The third attorney (inquiring attorney) wishes to appear before the municipality's zoning board of review on behalf of clients.

The nature of the attorney's office-sharing arrangement is as follows: The attorneys share a suite of offices in an office building in which there are other businesses and also other attorneys, but maintain three separate and independent law practices. The three attorneys share a common reception area, a conference room, and the expenses of a common receptionist who is also their typist. Each attorney has his/her own separate office which is not accessible to the other attorneys and which has its own lock. The attorneys have separate letterhead, phones, phone lines, and telephone numbers. Each maintains his/her own separate filing systems, both paper and electronic, to which neither of the other two attorneys have access. The inquiring attorney states that the attorneys do not hold themselves out as a partnership, or assert in any way that they are professionally affiliated as a law firm.

The signage outside the building lists all tenants by floor. The floor on which the three attorneys' offices are located contains a central office area and other offices. The offices of the three attorneys are located in the central office area. Three other businesses also have offices in the central office area. Outside of this central area, there are several offices occupied by other lawyers and businesses. The signage lists all tenants of the central office area under the heading "[Name of Building] Office Center." The names of the office center's tenants are listed in order of the lettered office they occupy. There is no further designation on the sign such as "Law Offices," and the three attorneys' names do not appear in succession. A sign inside the building lists the tenants of the central office area in the same way.

Issue Presented:

The inquiring attorney asks whether he/she may appear before the municipality's zoning board of review if two other attorneys with whom he/she shares office space are solicitors for the municipality.

Opinion:

Under the specific facts of this inquiry, the attorney who shares office space with attorneys who are solicitors for a municipality may appear before the municipality's zoning board of review.

Reasoning:

Rule 1.10, entitled "Imputed disqualification: General rule" provides in pertinent part:

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

The Commentary to Rule 1.10 explains:

. . . Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. Further, any two or more lawyers who, by signs, letterhead, or any form of advertising, list their names in succession will be regarded as a firm for the purposes of this Rule, notwithstanding disclaimers such as "an association of independent attorneys." The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve.

Under the specific facts presented in this inquiry, the Panel concludes that this office-sharing arrangement, including the manner in which the attorneys' names appear on the signage, does not constitute a law firm for purposes of Rule 1.10(a). There do not appear to be any indicia of professional affiliation as a law firm. Therefore, the conflict of interest which the solicitors have pursuant to Rule 1.7 in representing clients before the municipality's zoning board of review is not imputed to the inquiring attorney, and the inquiring attorney may appear before the zoning board on behalf of his/her clients.

The Panel has noted that the inquiring attorney and the two other attorneys share the same facsimile machine. This presents an obvious risk to confidentiality and the Panel advises the attorneys to discontinue the practice or to otherwise guard against this risk. The Panel further cautions this there is a similar risk of compromising the obligation of confidentiality when attorneys share secretarial services. See Rhode Island Supreme Court Ethics Advisory Panel Op. 93-66 (1993). The Panel advises the inquiring attorney that when he/she is retained by a client whose interests are adverse to the municipality, he/she should consider alternative secretarial arrangements and should take steps to address any other areas of administration that potentially compromise confidentiality.

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 issue raised by this inquiry.