

Final

**Rhode Island Supreme Court Ethics Advisory Panel**  
**Opinion No. 2001-08 - Request No. 837**  
**Issued November 8, 2001**

FACTS:

About three and one-half years ago, the inquiring attorney assisted another attorney in representing the other attorney's client, Company A, in connection with the purchase of a parcel of real estate (Parcel A). Company A had an option to purchase the real estate. The inquiring attorney was asked to provide legal services relating to compliance with the requirements of the applicable regulatory agency. The inquiring attorney attended meetings with Company A and its attorney, reviewed and evaluated site reports, attended meetings with consulting firms, reviewed and evaluated applicable laws and regulations, and communicated with the applicable regulatory agency. The inquiring attorney's last communication with either Company A or its attorney on this matter was about two and one-half years ago. The inquiring attorney states that he/she does not know whether Company A exercised its option to purchase the property.

Recently, Company B has requested that the inquiring attorney represent it in connection with the development of real estate (Parcel B) that requires approvals by the same regulatory agency. Parcel B is adjacent to Parcel A. Company A has submitted comments to the regulatory agency objecting to Company B's project. In a letter from Company A's counsel, the inquiring attorney has been advised that Company A objects to the inquiring attorney's representation of Company B. A copy of the letter was submitted to the Panel. The inquiring attorney states that no information gained from the representation of Company A is relevant or material to the representation of Company B.

ISSUE PRESENTED:

The inquiring attorney asks whether his/her representation of Company B presents a conflict of interest.

OPINION:

Company A is a former client of the inquiring attorney, and therefore Rule 1.9 applies. Aside from the fact that Parcel A and Parcel B are adjacent parcels, the Panel is unable to determine from Company A's objection letter and other information provided by the inquiring attorney what connection exists, if any, between the prior and the proposed representations. The Panel concludes that, if the two matters are not substantially related, the inquiring attorney's representation of Company B would not present a conflict of interest pursuant to Rule 1.9.

REASONING:

The inquiring attorney has had no communication with either Company A or its attorney for almost two and one-half years. There does not appear to be a continuing or long-standing attorney-client relationship between Company A and the inquiring attorney. The inquiring attorney has stated that the prior representation was the first and only time Company A had retained his/her firm. The Panel believes that the representation of Company A was terminated, and concludes that Company A is a former client of the inquiring attorney. Therefore, Rule 1.9 applies to these circumstances. Rule 1.9 states:

**Rule 1.9. Conflict of Interest: Former Client.** - A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

The Commentary to Rule 1.9 is also instructive. It states, “. . . a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client.” The subject of the prior representation of Company A was Parcel A. The subject of the representation of Company B will be Parcel B which is adjacent to Parcel A. Aside from the fact that these are adjacent parcels, the Panel is unable to determine from either Company A’s objection letter or from other information provided by the inquiring attorney what connection exists, if any, between the prior and the proposed representations. The Panel concludes that, if the two matters are not substantially related, the inquiring attorney’s representation of Company B would not present a conflict of interest pursuant to Rule 1.9.