

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2003-02 Request No. 859
May 22, 2003

Facts:

Several years ago, the inquiring attorney became the attorney for an existing corporation comprised of two shareholders. During the representation, two other individuals purchased into the corporation as shareholders. The inquiring attorney represented the corporation in its negotiations with the individuals. One of the original shareholders has retired and is no longer a shareholder.

A dispute has arisen between the remaining original shareholders and other shareholders over the value of the shareholders' interests. The remaining original shareholder has requested that the inquiring attorney represent him/her in the dissolution of the corporation. The inquiring attorney anticipates that the two remaining shareholders will not agree to a voluntary dissolution and that an action in Superior Court will be necessary.

Issue Presented:

May the inquiring attorney who is the attorney for a corporation represent one of its shareholders in an action for the dissolution of the corporation?

Opinion:

No. As the lawyer for the corporation, the inquiring attorney has a conflict of interest pursuant to Rule 1.7 of the Rules of Professional Conduct, and may not represent one shareholder in the dissolution of the corporation where other shareholders will oppose the dissolution.

Reasoning:

Rule 1.13 entitled "Organization as Client" applies to this inquiry. In pertinent part, Rule 1.13(e) states:

Rule 1.13. Organization as client. (e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Rule 1.7 states as follows:

Rule 1.7. Conflict of Interest: General rule. (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The Panel believes that a conflict of interest exists under Rule 1.7. The inquiring attorney's representation of one shareholder in an action for involuntary dissolution of the corporation is adverse to the interests of the corporation and is materially limited by the inquiring attorney's responsibilities to the corporation. See R.I. Sup. Ct. Ethics Advisory Panel Op. 93-59 (1993); Missouri, Ethics Op. (informal) 060100 (undated); Missouri Ethics Op. (informal) 000061 (2000). Accordingly, the Panel advises the inquiring attorney to decline the representation of a shareholder who seeks the corporation's dissolution where dissolution will be opposed by other shareholders.