

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2003-04 Request No. 865
Issued September 11, 2003

Facts:

The inquiring attorney is the attorney for an unincorporated condominium association which is managed by a duly elected board of directors. The board of directors has the authority to hire legal counsel as well as to file suit on behalf of the association. The board of directors retained the inquiring attorney to represent the association.

At the request of the association, the inquiring attorney filed a complaint against a unit owner. Plaintiffs in the pending lawsuit are the association and its president.

The inquiring attorney seeks to withdraw from the litigation and from the representation of the association, citing breach of the written representation agreement and consistent failure of the board of directors to accept his/her legal advice. The inquiring attorney believes that it would benefit the association to disclose his/her reasons for withdrawing to the individual unit owners. The inquiring attorney states that while he/she generally communicates directly with the board of directors, on occasion, unit owners have called him/her on matters relating to the association.

Issue Presented:

The inquiring attorney asks whether communicating the reasons for his/her withdrawal directly to the unit owners would be a violation of Rule 1.6.

Opinion:

It is a violation of Rule 1.6 for the inquiring attorney to disclose to the individual unit owners his/her reasons for withdrawing from the representation of the association, as those reasons constitute "information relating to the representation" of his/her client, the condominium association, and as such are protected by Rule 1.6.

Reasoning:

Rule 1.13 entitled "Organization as Client" provides in pertinent part as follows:

- (a) A lawyer employed or retained by an organization represents the organization acting through its duty authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

- (1) asking reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

* * *

Pursuant to paragraph (a), the inquiring attorney represents the legal entity, *viz*, the condominium association, acting through its duly authorized board of directors. He/she does not represent the individual unit owners. The Commentary to Rule 1.13 discusses a lawyer's duty of confidentiality in the context of the organizational client. It states:

When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

The Commentary further cautions that "[t]he authority and responsibility provided in paragraph (b) are concurrent with the authority and responsibility provided in the Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rule 1.6. . . ."

The Panel concludes that it is a violation of Rule 1.6 for the inquiring attorney to disclose to the individual unit owners his/her reasons for withdrawing from the representation of the association, as those reasons constitute "information relating to the representation" of his/her client, the condominium association, and as such are protected by Rule 1.6.