

Final

Rhode Island Supreme Court Ethics Advisory Panel Opinion No. 2005-00-07 Request No. 901 Issued September 22, 2005

Facts:

The inquiring attorney is a member of a veterans pro bono program and would like to represent clients before the United States Court of Appeals for Veterans Claims (hereinafter "Court of Veterans Claims.") The Court of Veterans Claims provides appellate review of cases heard by the Board of Veterans Appeals (hereinafter "The Board.") The inquiring attorney states that most veterans are not represented by an attorney until cases reach the Court of Veterans Claims.

The inquiring attorney's brother-in-law is an attorney with the Appellate Litigation Division of the United States Department of Veterans Affairs. The Department is adversarial to the veterans in matters brought before the Court of Veterans Claims. The Department's litigation division is divided into four teams. The inquiring attorney's brother-in-law is the supervising attorney for one team. The inquiring attorney states that should he/she represent a veteran before the Court of Veterans Claims, he/she has been assured that the case would not be handled by his/her brother-in-law or by other lawyers on the brother-in-law's team.

Meanwhile, the inquiring attorney's sister is a staff attorney with the Board. She assists hearing offices in preparing their decisions, and in limited instances, serves as a hearing officer.

Issue Presented:

Given the employment of his/her sister and his/her brother-in-law, the inquiring attorney asks whether he/she has a conflict of interest in representing clients before the Court of Veterans Appeals.

Opinion:

The inquiring attorney may represent clients before the Court of Veterans Claims provided that he/she not represent clients aggrieved by a decision of his sister as hearing officer unless the inquiring attorney (1) reasonably believes the representation will not be adversely affected; and (2) obtains the client's consent after consultation.

Reasoning:

The issue of related lawyers representing opposing parties is the subject of Rule 1.8(i) which states:

- (i) A lawyer shall not represent a client in any matter where the lawyer knows that the lawyer's parent, child, sibling, or spouse is the lawyer representing an adverse party to the transaction except upon consent by the client after consultation regarding this relationship.

Rule 1.8(i) specifies certain relatives, including a sibling, but does not include a sibling's spouse. Therefore, Rule 1.8(i) would not prohibit attorneys related by marriage from representing opposing parties. However, Rule 1.7 which is the general rule relating to conflicts of interest, may apply. Specifically, Rule 1.7(b) states:

- (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.

A family relationship between two attorneys related by marriage who represent opposing parties could interfere with both loyalty and independent judgment, and thus could materially limit the representations. It is the Panel's opinion that such a conflict-of-interest would be personal and therefore would not be imputed to other attorneys in a law firm.

In the instant inquiry, the inquiring attorney has received assurances that neither his/her brother-in-law nor another attorney whom the brother-in-law supervises will

litigate a case in which the inquiring attorney represents a veteran. Based on these facts, the Panel concludes that the inquiring attorney may represent clients on appeals before the Court of Veterans Claims.

As to the inquiring attorney's sister's position as an attorney for the Board, the Panel believes that pursuant to Rule 1.7(b), the inquiring attorney has a conflict of interest in the representation of a client who was aggrieved by the decision of a hearing officer when the hearing officer was the inquiring attorney's sister. In that event, the Panel believes that the inquiring attorney may represent such a client provided that the inquiring attorney reasonably believes that the representation of his/her client will not be adversely affected, and the client consents after consultation. See Rule 1.7(b).

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under any other rules, regulations, or laws that may have bearing on the issues raised by this inquiry.