

Final

**Rhode Island Supreme Court  
Ethics Advisory Panel  
Opinion No. 2006 -01 Request No. 910  
Issued May 11, 2006**

Facts

The inquiring attorney represents an individual who was a passenger in a vehicle (Vehicle 1) that was rear-ended by another vehicle (Vehicle 2). The passenger has made a claim for personal injuries against the owner of Vehicle 2. The passenger has not pursued a claim against the owner/driver of Vehicle 1. The owner/driver of Vehicle 1, who also suffered injuries, is represented by other counsel.

The passenger's case against the owner of Vehicle 2 was settled for the policy limits. The passenger's own insurer and the insurer for the owner/driver of Vehicle 1 each approved the settlement. The passenger is now pursuing underinsured claims under her own policy and under the policy of Vehicle 1's owner/driver.

Recently, the owner/driver of Vehicle 1 consulted with the inquiring attorney seeking representation in a slip and fall case. The inquiring attorney states that the driver/owner of Vehicle 1 settled his/her claim against the driver/owner of Vehicle 2 for less than the available policy limits, and is not seeking to recover under the uninsured-motorist provisions of his/her own insurance policy.

Issue Presented

The inquiring attorney asks whether he/she would have a conflict of interest in representing the owner/driver of Vehicle 1 in the slip and fall matter if he/she currently represents the passenger in a claim against the underinsured portion of Vehicle 1's owner/driver's insurance policy.

Opinion

The inquiring attorney's representation of the passenger in an underinsured claim against the insurer of Vehicle 1's owner/driver does not present a conflict of interest under Rule 1.7 to his/her representation of the driver/owner in a slip and fall case.

Reasoning

Conflicts of interest relating to current clients are governed by Rule 1.7 of the Rules of Professional Conduct. Rule 1.7 states:

**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 inquiring attorney would have a conflict of interest if the interests of his current client, the passenger, are adverse to those of the potential client. The passenger's underinsured claim is a contract claim against the insurer of Vehicle 1's owner/driver's policy. See Pickering v. American Employers Insur. Co., 282 A.2d 584, 588 (R.I. 1971). Thus, the adverse party in that claim is the owner/driver's insurance company, and not the owner/driver.

Other facts satisfy the Panel that the interests of the passenger and the driver/owner of Vehicle 1 are not otherwise adverse. The driver/owner settled his/her claim against the at-fault party for less than available policy limits, and is therefore not seeking to recover under his/her uninsured-motorist coverage.

On the basis of the facts as presented, the Panel concludes that the inquiring attorney's representation of the passenger in an underinsured claim against Vehicle 1's owner/driver's insurer does not present a conflict of interest under Rule 1.7 to his/her representation of the driver/owner in a slip and fall case.