

**Final**

**Rhode Island Supreme Court  
Ethics Advisory Panel Opinion No. 2010-04  
Issued September 9, 2010**

FACTS

The inquiring attorney represents a municipality in labor and personnel matters. The inquiring attorney states that he/she provides assistance to the city solicitor's office with respect to those matters. The inquiring attorney further states that he/she was retained by the mayor with the concurrence of the municipality's solicitor, and that he/she reports to the solicitor and to the mayor. The parents of a student with disabilities have asked the inquiring attorney to represent them in a matter against the municipality's school department. The matter relates to special education services to which the student may be entitled under state and federal laws. The inquiring attorney states that a monetary judgment in favor of the prospective clients would be satisfied by the municipality.

ISSUE PRESENTED

The inquiring attorney, who represents the municipality in labor and personnel matters, asks whether he/she would have a conflict of interest if he/she represents clients in a matter against the municipality's school department.

OPINION

The inquiring attorney's representation of parents of a student with disabilities against a municipality's school department would constitute a conflict of interest pursuant

to Rule 1.7 where the inquiring attorney also represents the municipality in labor and personnel matters. Absent consent pursuant to Rule 1.7(b), the inquiring attorney may not take on the proposed representation.

### REASONING

Rule 1.7 of the Rules of Professional Conduct is pertinent to this inquiry. The Rule states:

**Rule 1.7 Conflict of interest: Current clients.** (a) Except as provided in Paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

In Ethics Advisory Panel Op. 2007-03 (2007), the Panel concluded that the representation of private clients before a municipality's zoning board of review or its town council by an attorney who represented the municipality as special counsel in two separate lawsuits constituted a conflict of interest pursuant to Rule 1.7. In Ethics Advisory Panel Op. 2003-06 (2003), the Panel similarly concluded that it was a conflict of interest for an attorney to represent a municipality in a lawsuit where the attorney also represented clients in matters before the municipality's planning and zoning boards.

In the instant inquiry, the inquiring attorney has an attorney-client relationship with the municipality. He/she proposes to represent clients in a matter against the municipality's school department. The school department is a body of the municipality. In the Panel's view, the student's parents would occupy a position adverse to the municipality in a proceeding against its school department. See Ethics Advisory Panel Op. 90-36 (1990) (party to city's zoning board action occupies position adverse to city).

Rule 1.7 prohibits the inquiring attorney from representing clients with interests adverse to his/her current client, the municipality. The Panel therefore concludes that where the inquiring attorney represents the municipality in labor and personnel matters, the inquiring attorney's representation of the parents of a student against the municipality's school department would constitute a conflict of interest pursuant to Rule 1.7. Absent consent pursuant to Rule 1.7(b), the inquiring attorney may not take on the proposed representation.<sup>1</sup>

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<sup>1</sup> The Panel has considered Gray v. Dept. of Children, Youth, and Families, 937 F. Supp. 153 (D.R.I. 1996) which the inquiring attorney suggests supports a conclusion that the proposed representation would not be a conflict of interest. In the Panel's view, Gray does not support such a conclusion. In Gray, it was held that an attorney who represented one state agency did not have a conflict of interest in representing clients against another state agency. Id. at 160. The court denied a motion to disqualify plaintiff's counsel, stating "...as an attorney for the Boards, [the attorney's] clients for purposes of Rule 1.7 are the Boards themselves, and not the State of Rhode Island." Id. The inquiring attorney in the instant inquiry represents the municipality as a whole, and he/she now proposes to concurrently represent clients in a matter against a subdivision of the municipality. In the Panel's opinion, neither Gray nor Rule 1.7 of the Rules of Professional Conduct permits the representation the inquiring attorney proposes.