

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Opinion No. 2010-07
Issued October 18, 2010**

Facts

The inquiring attorney represents Mr. A in a divorce proceeding, and has received a notice of deposition of Mrs. B from opposing counsel. Mr. A's wife is alleging that Mrs. B was romantically involved with Mr. A during Mr. and Mrs. A's marriage. The inquiring attorney also represents Mrs. B in her divorce proceeding.

The inquiring attorney states that at no time did either Mr. A or Mrs. B disclose to him/her that there was any romantic involvement between them. Upon receiving the notice of deposition of Mrs. B, the inquiring attorney discussed Mrs. A's allegation with both Mr. A and Mrs. B. Both clients deny any romantic involvement. Mr. A and Mrs. B want the inquiring attorney to continue to represent them in their respective divorce matters.

Issue Presented

May the inquiring attorney simultaneously represent Mr. A and Mrs. B at the deposition of Mrs. B in Mr. A's divorce case?

Opinion

The inquiring attorney's simultaneous representation of Mr. A and Mrs. B at the deposition of Mrs. B in Mr. A's divorce case is not a conflict of interest under Rule 1.7 because the interests of Mr. A and Mrs. B are not adverse, and further, because there does not appear to be a significant risk that the representation of one will be materially limited by the inquiring attorney's responsibilities to the other.

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.

From the limited facts presented, there does not appear to be a conflict of interest if the inquiring attorney simultaneously represents both clients, Mr. A and Mrs. B, at the deposition of Mrs. B in Mr. A's divorce case. The inquiring attorney has stated that both Mr. A and Mrs. B deny that they have had a romantic involvement as alleged. The interests of the two clients are not adverse. In fact, their interests with respect to the deposition may be aligned. Under these limited facts, there does not appear to be a significant risk that the representation of one client will be materially limited by the inquiring attorney's responsibilities to the other client. The Panel therefore concludes that the simultaneous representation of Mr. A and Mrs. B at the deposition of Mrs. B in Mr. A's case is not a conflict of interest, and is permissible.