

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2012-01 Request No. 993
Issued January 12, 2012**

FACTS

The inquiring attorney seeks to represent a client in a bankruptcy matter in which a property interest of the client's mother, who is a former client, could be affected. In 2011, the inquiring attorney filed a Chapter 7 voluntary bankruptcy petition for the former client (the "Mother"). The Mother received a discharge and the case was closed. Subsequently, the inquiring attorney agreed to represent the client (the "son") in a Chapter 7 voluntary bankruptcy petition. There is a debt collection judgment against the son, and as a professional courtesy, the creditor's attorney agreed to postpone the son's citation hearing.

During the preparation of the son's bankruptcy petition, the inquiring attorney identified a transfer of real property from the son and his sister to the Mother in March 2010, which transfer may be at risk of being avoided during the son's bankruptcy case. The transfer pertains to the Mother's current residence and was effected using a quitclaim deed conveying the interests of the son and the daughter to the Mother. The inquiring attorney states that this 2010 transfer essentially reversed a transfer made from the Mother to the son and daughter in August 2003. He/she further states that both transfers were made at the request of the Mother, and were for convenience if something happened to the Mother. The mother is elderly and partially disabled.

The inquiring attorney explains that because the transfer of the property to the Mother in March 2010 occurred less than two years ago, if the son were to file bankruptcy at this time, section 548(a) of the Bankruptcy Code would provide the bankruptcy trustee with authority to consider avoiding the March 2010 transfer of the son's interest. The Code also provides the trustee with authority to consider avoiding the transfer under Rhode Island law. The inquiring attorney states that should a trustee choose to avoid the transfer, the trustee could potentially recover the son's property interest through either a sale of the Mother's property, or by placing a lien on the Mother's property and possibly liquidating the lien to raise cash to pay creditors. The inquiring attorney further states that as a practical matter, it is within the discretion of each bankruptcy trustee to determine if moving to avoid the transfer and recovering any value is worthwhile.

ISSUE PRESENTED

The inquiring attorney asks whether there is a conflict of interest in the representation of the son in a bankruptcy matter in which a property interest of the Mother, a former client, could be affected.

OPINION

It is not a conflict of interest under Rule 1.9 for the inquiring attorney to represent the son in a bankruptcy matter in which the property of the Mother, a former client, may be affected. The son's bankruptcy matter is not the same matter or substantially related to the Mother's bankruptcy matter.

REASONING

Rule 1.9 entitled "Duties to former client" is applicable to this inquiry. In pertinent part, it states:

Rule 1.9. Duties to former client. (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
- (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

The question to be resolved in this inquiry is whether the bankruptcy petitions of the son and of the Mother are the same or substantially related matters. Comment [3] to Rule 1.9 is instructive. It provides in part:

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation

would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent.

The subject of the son's bankruptcy matter are his debts and assets vis-à-vis his creditors. The subject of the Mother's bankruptcy matter were her debts and assets vis-à-vis her creditors. The Panel is of the opinion that the Mother's bankruptcy matter and the son's bankruptcy matter are not the same or substantially related matters. Therefore, the Panel concludes that it is not a conflict of interest for the inquiring attorney to represent the son in his bankruptcy petition. The Panel further advises the inquiring attorney that under Rule 1.9 (c), the inquiring attorney shall not use information relating to the Mother's representation to the disadvantage of the Mother, or reveal information relating to the representation, except as the Rules would permit or require.