

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2018-03
Issued October 11, 2018**

FACTS

The inquiring attorney represented an individual taxpayer in a superior court action in which the individual sought declaratory relief related to a municipality's application of tax assessments in favor of a certain project. The individual claimed that the favorable assessment resulted in higher taxes levied on real estate owned by the individual. The individual did not prevail in the lawsuit. The inquiring attorney's representation of the individual was limited to the superior court action, and ended after the superior court's decision. The individual, acting *pro se*, has filed an appeal from the superior court's decision.

A member of a citizen organization that is made up of taxpayers in the municipality and which has an interest in the underlying tax issues in the individual's appeal, wants to file an amicus brief in the appeal. The member of the citizen organization has asked the inquiring attorney to represent him for this purpose. The individual whom the inquiring attorney represented in the superior court case is a member of the citizen organization, and would withdraw from membership if it would create a conflict of interest for the inquiring attorney.

ISSUE PRESENTED

Is it a conflict of interest for the inquiring attorney to represent the member of the citizen organization?

OPINION

It is not a conflict of interest under Rule 1.9 for the inquiring attorney to represent a member of a citizen organization in the submission of an amicus brief in support of the *pro se* appeal of a former client.

REASONING

The individual is a former client of the inquiring attorney. Therefore Rule 1.9 of the Rules of Professional Conduct, which is entitled "Duties to former client," applies to this inquiry. The Rule states in pertinent part as follows:

- (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.

Rule 1.9 prohibits a lawyer from representing a person in the same or substantially related matter in which that person's interests are materially adverse to the interests of a former client, unless the former client consents. In the instant inquiry, the inquiring attorney proposes to represent a member of a citizen organization in the submission of an amicus brief in support of his/her former client's *pro se* appeal. The matter in the inquiring attorney's proposed representation and the matter in his/her prior representation of the former client in the superior court action are substantially related, if not the same. The interests of the organization's member, however, are not adverse to those of the inquiring attorney's former client. Therefore, the inquiring attorney's proposed representation of the prospective client is permissible under the Rules. The Panel further advises that the inquiring attorney must be mindful of the requirements of paragraph (c) of Rule 1.9.

The Panel concludes that it is not a conflict of interest under Rule 1.9 for the inquiring attorney to represent the member of a citizen organization in the submission of an amicus brief in support of his/her former client's *pro se* appeal.