

Final

Rhode Island Supreme Court Ethics Advisory Panel Op. 2023-3 Issued June 8, 2023

FACTS

The inquiring attorney represents a quasi-municipal agency (“Agency”). He/she has represented the Agency, as well as its governing board (“Board”), in various litigation matters and also in connection with Open Meetings Act (“OMA”) and Access to Public Records Act complaints to the Attorney General.

The inquiring attorney was present at a recent meeting of the Board. A member of the Board attended the meeting remotely, via Zoom. He/she was not attending in his/her capacity as a Board member but rather as a member of the public.

After the meeting, that Board member filed an OMA complaint against the Agency with the Attorney General regarding some of the matters discussed at the meeting. The inquiring attorney has been assigned to represent the Agency in responding to the OMA complaint.

The inquiring attorney advises that he/she does not have any specific or confidential information regarding the Board member complainant. Further, the complaint was not based on any legal advice the inquiring attorney gave the Board, including the complainant, whether at this or a previous meeting. Rather, the basis of the OMA complaint is what transpired at the meeting.

The inquiring attorney further notes that the meeting at issue was recorded via Zoom. Therefore, in responding to the OMA complaint, the inquiring attorney will not need to consult the memory of individual Board members or others present at the meeting.

ISSUE PRESENTED

Whether it is permissible for the inquiring attorney to represent the Agency in its response to the OMA complaint when the complainant is a Board member, albeit one who attended the subject meeting in his/her capacity as a member of the public.

OPINION

The Panel concludes that it is permissible for the inquiring attorney to represent the Agency in its response to the OMA complaint. The attorney-client relationship is between the inquiring attorney and the Agency. The Board member, who attended the meeting as a member of the public, is not considered a client of the inquiring attorney for purposes of the Rules of Professional Conduct. As a result, there is no concurrent conflict of interest that would preclude the proposed representation.

REASONING

Rule 1.13(a) of the Rules of Professional Conduct states: “A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”

Pursuant to Rule 1.13, the attorney-client relationship is between the inquiring attorney and the Agency. Although the complainant is a member of the Agency’s Board, he/she is not individually a client of the inquiring attorney. See Ethics Advisory Panel Op. 2002-02 (2002) (concluding that a solicitor’s client is the municipality acting through its council and not individual council members). Thus, the inquiring attorney’s duty of loyalty is to the Agency and not to its individual Board members.

Rule 1.7 of the Rules of Professional Conduct is entitled “Conflict of Interest: Current Clients.” Rule 1.7(a) states:

(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.

The first step in resolving a “conflict of interest problem under this Rule requires the lawyer to . . . clearly identify the client or clients.” See Rule 1.7, Comment [2].

For the reasons stated, the Board member complainant is not a client of the inquiring attorney. Consequently, there is no concurrent conflict of interest precluding the inquiring attorney from representing the Agency in its response to the OMA complaint.

In reaching this conclusion, the Panel found significant the fact that the inquiring attorney was attending the meeting as legal counsel to the Agency and the Board member was attending remotely in his/her capacity as a member of the public. Further, the OMA complaint emanated from what transpired at the meeting and not any legal advice that the inquiring attorney gave the Board whether at this or a previous meeting.