

**Final**

**Rhode Island Supreme Court  
Ethics Advisory Panel Op. 2023-4  
Issued July 17, 2023**

FACTS

The inquiring attorney's law firm was recently appointed as the Town Solicitor for a municipality ("Town"). The law firm is also legal counsel to a management agency with regulatory functions ("Agency"). As part of its regulatory functions, the Agency reviews and makes consistency determinations for certain development projects. It has recently conducted one such review and anticipates it will be conducting another such review in the future.

At a recent Town Council meeting, the Town Council approved a resolution in opposition to the certain type of development project that the Agency is tasked with reviewing. The inquiring attorney was present at this meeting, along with an associate from his/her law firm and both submitted a recusal form to the clerk and recused from the matter. The inquiring attorney advises that the resolution did not mention the Agency and was not forwarded to the Agency. Rather, it was forwarded to other municipalities and certain elected officials.

ISSUE PRESENTED

The inquiring attorney asks whether his/her law firm's simultaneous representation of the Town and the Agency presents a conflict of interest.

OPINION

It is the Panel's opinion that there is no conflict of interest because, on the facts presented, the Agency and Town do not have adverse interests.

REASONING

Rule 1.7 of the Rules of Professional Conduct entitled "Conflict of Interest: Current Clients" applies. It 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.

(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.

“Rule 1.7 is grounded primarily upon the attorney’s duty of loyalty to his or her client.” See Markham Concepts, Inc. v. Hasbro, Inc., 196 F. Supp. 3d 345, 349 (D.R.I. 2016) (interpreting Rhode Island Rule of Professional Conduct 1.7). That “[l]oyalty to a current client prohibits undertaking representation directly adverse to that client without that client’s informed consent.” Rule 1.7 Comment [6].

The inquiring attorney’s law firm has a lawyer-client relationship with the Town. Therefore, under Rule 1.7, he/she may not represent clients with interests adverse to the municipality. However, based on the facts described by the inquiring attorney, it is the Panel’s opinion that the Agency’s interest is not adverse to the Town or its Town Council. The Town Council simply took a position on the type of development project that the Agency is tasked with reviewing. In the absence of competing interests, there is no concurrent conflict of interest.

The Panel emphasizes, as it has done in the past, that whether a conflict of interest exists is determined on a case by case basis. While the Panel sees no conflict of interest based on the facts presented, it does caution the inquiring attorney to be mindful of the possibility of such a conflict arising in the future.