

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
OPINION NO. 97-02, REQUEST NO. 699
Issued February 13, 1997**

FACTS:

Attorney A, who is the inquiring attorney, and Attorney B are members of the same law firm. Attorney A represents Smith in a suit against Jones Company during the pendency of which Jones Company applied for a loan from a financial institution. The financial institution retained Attorney B to represent it in the loan transaction, and gave to Attorney B documents containing financial information about Jones Company. Attorney B was not aware of the pending lawsuit, and Attorney A was not aware of Attorney B's involvement in the Jones Company financing, until shortly before the closing. At the closing Jones Company was represented by the law firm that defends it in the pending lawsuit.

ISSUES PRESENTED:

The inquiring attorney asks (a) whether there is a conflict of interest which requires him/her to withdraw from continued representation of Smith; and (b) whether he/she may withdraw even if there is no conflict of interest to avoid the appearance of impropriety and potential conflict among the parties.

OPINION:

There is no conflict of interest requiring Attorney A to withdraw from representing Smith in the lawsuit. Under Rule 1.17(b) of the Rhode Island Supreme Court Rules of Professional Conduct, Attorney A may withdraw at his/her option if withdrawal can be accomplished without adverse effect on the interests of Smith.

However, although there is no conflict of interest, there exists a serious appearance of impropriety, particularly if the financial position of Jones Company is material to the lawsuit. The Panel advises Attorney A to give serious consideration to withdrawing from the representation of Smith.

REASONING:

Under Rule 1.10(a) of the Rhode Island Supreme Court Rules of Professional Conduct entitled "Imputed Disqualification: General Rule," Attorney A would be prohibited from continuing to represent Smith if Attorney B were so prohibited by the rules pertaining to

conflicts of interest namely, Rule 1.7, Rule 1.8(c), Rule 1.9, or Rule 2.2. See Rule 1.10(a). Attorney B did not represent Jones Company, which was represented at the closing and in the lawsuit by its own counsel. In addition, it does not appear from the facts provided that the representation of Smith was or would be materially limited by Attorney B's responsibilities to a third party, i.e., the financial institution. See Rule 1.7(b). Therefore, it does not appear that Attorney B would have a conflict of interest were he/she to undertake the representation of Smith. Because there would be no such conflict of interest for Attorney B, there would likewise be none for Attorney A. Accordingly, Attorney A is not required to withdraw from representing Smith.

Attorney A may choose to withdraw from representing Smith under Rule 1.17(b) if the "withdrawal can be accomplished without material adverse effect on the interests of the client."

Attorney B obtained the financial information on Jones Company from his/her client, the financial institution, as part of his/her legal services for the loan transaction. Under Rule 1.6, Attorney B has an obligation to maintain the confidentiality of all information which relates to the representation of a client and may not disclose information about Jones Company to Attorney A.