

Final

**RHODE ISLAND SUPREME COURT  
ETHICS ADVISORY PANEL  
Opinion No. 97-07, Request No. 707  
Issued April 10, 1997**

Facts:

The inquiring attorney has represented the wife in a contested divorce for almost a year. At a recent deposition of the husband, opposing counsel objected to the inquiring attorney's representation of the wife, alleging that the inquiring attorney had formerly represented the husband and therefore has a conflict of interest. Specifically, the inquiring attorney had given the wife, who is also his/her employee and relative, a refrigerator as a Christmas bonus during the marriage. Additionally, the inquiring attorney had drafted a partnership agreement relating to real estate purchased by several members of the inquiring attorney's family (mostly husbands and wives), including the inquiring attorney and his/her spouse, and the husband and wife in the instant divorce action.

The inquiring attorney states that after the divorce action was commenced, the husband and wife sold their interests in the partnership, each netting an equal sum of money. The partnership real estate was later sold. The real estate, the proceeds of its sale, and the refrigerator are not in dispute relative to the distribution of marital assets.

**Issue Presented:**

Does the inquiring attorney have a conflict of interest which precludes him/her from representing the wife, either by virtue of having given the wife the refrigerator or by drafting the partnership agreement?

**Opinion**

There is no conflict of interest and the inquiring attorney may continue to represent the wife in the divorce action.

**Reasoning**

In drafting the partnership agreement, the inquiring attorney served as an intermediary, establishing a relationship, *i.e.* the family partnership, on an amicable and mutually advantageous basis for common clients. See Rule 2.2 and Comment to Rule 2.2. Rule 1.9(a) of the Rules of Professional Conduct states that an attorney shall not represent 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. The husband and wife's interests in the partnership are not marital assets in the divorce action, and the two matters are not substantially

related. The Panel concludes that there is no conflict of interest precluding the inquiring attorney from continuing to represent the wife.

Bestowing a refrigerator to one's employee-relative does not constitute legal representation of either the employee or his/her spouse and does not otherwise give rise to any conflict of interest under the Rules of Professional Conduct. The Rules caution, however, against the misuse by opposing counsel of raising a conflict of interest as a technique of harassment or as a procedural weapon. See Scope and Comment to Rule 1.7.