

Final

**RHODE ISLAND SUPREME COURT  
ETHICS ADVISORY PANEL  
Opinion No. 97-18, Request No. 725  
Issued October 9, 1997**

**Facts:**

The inquiring attorney represented Husband and Wife in a letter-complaint filed with the Department of Business Regulation (DBR) against an insurance company. The engagement agreement expressly limited the inquiring attorney's representation of them to the complaint filed with DBR. The subject matter of the complaint related to alleged fraudulent conduct of the insurance company's agent to induce the couple to purchase additional insurance policies. Husband and Wife provided the inquiring attorney with the life insurance policies which were pertinent to the complaint. Other information relating to the couple's assets was not relevant to the complaint and was not disclosed to the inquiring attorney.

Efforts at resolution failed, and the DBR closed the matter. The couple then elected to submit their claim to the alternate dispute resolution process of a policyholder remediation plan that had been established as part of a federal class action lawsuit. Under the plan, if Husband and Wife are not satisfied with the outcome, they are entitled to have their claim reconsidered and to have legal representation at no cost. The inquiring attorney has no written or oral agreement with the couple to represent them in the policyholder remediation plan. The inquiring attorney states that his/her representation of them terminated when he/she forwarded to them the election forms for the remediation plan.

Several months after the inquiring attorney's representation in the DBR matter terminated, Wife retained another attorney to represent her in an uncontested divorce. Husband has asked the inquiring attorney to represent him in the divorce action. Wife has filed the Family Court's Statement of Assets Liabilities Income Expenses (Form DR6A) with the divorce complaint and with a motion for temporary support. The inquiring attorney states that the information relating to the insurance policies which he/she had obtained as part of the DBR matter is information that the Wife is required to disclose, and has disclosed, on the Family Court's Form DR6A.

**Issue Presented:**

Is there a conflict of interest under the Rules of Professional Conduct if the inquiring attorney represents Husband?

**Opinion:**

There is no conflict of interest and the inquiring attorney may represent Husband in the divorce action. Wife is a former client, and the divorce action is not the same or substantially related to the complaint against the insurance company in the DBR matter.

**Reasoning:**

The facts as presented support the conclusion that Wife is a former client of the inquiring attorney and therefore, Rule 1.9 governs this inquiry. See R.I. Sup. Ct. Ethics Advisory Panel Opinion 95-49 (1995). The scope of the inquiring attorney's representation of Husband and Wife was expressly limited to the complaint filed with DBR. The information acquired by the inquiring attorney during the course of that representation was similarly limited to information relating to the policies and to the conduct of the insurance agent who sold the couple the policies. Husband and Wife did not disclose to the inquiring attorney information about their other assets. The absence of any agreement between the inquiring attorney and the couple for representation beyond the DBR matter, together with the availability of legal representation under the policyholder remediation plan, further demonstrate that the representation terminated when DBR closed the matter and Husband and Wife elected to participate in the plan.

Rule 1.9 states:

A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) 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 consents after consultation; or
- (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

The DBR matter and the divorce action are not the same or substantially related, and therefore the inquiring attorney may represent Husband in the divorce matter without Wife's consent. Even though the cash value of the insurance policies may be marital assets, the issues addressed in the couple's claim against the insurance company are not substantially related to the issues in the divorce action. Finally, Rule 1.9(b) prohibits the inquiring attorney from using relevant confidential information which he/she may have acquired in the prior representation, if any, to the Wife's disadvantage in the divorce action.

The Panel's advice is provided for the benefit of the inquiring attorney for the purpose of avoiding disciplinary action. It is not binding on a court which has unfettered authority to render an independent decision on the propriety of the inquiring attorney's representation of Husband.

See O'Rourke v. Power, No. 95-458 M.P. (R.I. Feb. 26, 1997).