

Final

**RHODE ISLAND SUPREME COURT  
ETHICS ADVISORY PANEL  
Opinion No. 97-21, Request No. 729  
Issued November 13, 1997**

**Facts:**

The inquiring attorney represents A in connection with a personal injury claim. B and C, who are A's spouse and child, respectively, have loss of consortium claims related to A's personal injury. After consulting the inquiring attorney about the personal injury matter, A and B filed for divorce. The inquiring attorney represents neither A nor B in the divorce action. A has informed the inquiring attorney that B's divorce lawyer has indicated that as part of the divorce settlement, B may seek a portion of A's damages for lost wages. A has also informed the inquiring attorney that A's divorce lawyer may advise A not to seek damages for lost wages because A's injury is serious enough to warrant payment of the policy limits even without a lost wages claim. The inquiring attorney has informed A and B that the divorce raises the possibility of a conflict over the division of settlement funds, and has included a provision to that effect in a written fee agreement. Nevertheless, A and B want the inquiring attorney to represent both of them in the personal injury matter, and have signed the fee agreement, waiving the conflict.

**Issue Presented:**

The inquiring attorney asks whether he/she may represent both A and B in the personal injury matter.

**Opinion:**

The inquiring attorney may not represent A in his/her personal injury claim and B in his/her loss of consortium claim.

**Reasoning:**

Rule 1.7 entitled "Conflict of Interest: General Rule" states:

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
  - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
  - (2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

As part of the distribution of assets in the divorce proceeding, B may be entitled to a portion of A's damages for lost wages pursuant to the equitable distribution statute. See G.L. § 15-5-16.1. B therefore has an interest in A's personal injury recovery which is adverse to A's interest. As the inquiring attorney has correctly disclosed to A and B, Rule 1.7(a) would preclude him/her from representing both claimants in a dispute over the division of funds.

Quite apart from the conflict of interest that arises from the adverse claims to the eventual recovery, a conflict arises in the dual representation as a whole. The inquiring attorney must consider that the decision to pursue or to forestall pursuing a claim for lost wages as part of A's personal injury matter may adversely affect one client while at the same time work to benefit the other. The Panel is of the opinion that the inquiring attorney's representation of A would be materially limited by his/her responsibilities to B. In the face of such a direct conflict it is not reasonable to believe that the representation of A will not adversely affect the representation of B and vice versa. The Panel therefore concludes that pursuant to Rule 1.7(b), the inquiring attorney is precluded from representing B in the loss of consortium claim.