

Final

**RHODE ISLAND SUPREME COURT  
ETHICS ADVISORY PANEL  
Opinion No. 98-01, Request No.735  
Issued January 15, 1998**

**FACTS:**

An insurance company has engaged the inquiring attorney's law firm to represent both its insured under an automobile policy and also the alleged driver of the insured vehicle in an action arising out of a collision with another automobile. The inquiring attorney sent letters and made telephone calls to the insured and to the driver regarding the claims and the representation, but received no response. Having received notice that the driver had been served with a complaint, and notwithstanding that attempts to contact the driver were unsuccessful, the inquiring attorney filed an answer with the court on behalf of the driver to avoid default. Several weeks later, the insured, finally having been served with a complaint in the same matter, consulted with the inquiring attorney. During the consultation, the attorney acquired information that is adverse to the interests of the driver and favorable to the insured. The inquiring attorney has advised the insured that his/her law firm cannot represent both the insured and the driver because of a conflict of interest.

**ISSUES PRESENTED:**

The inquiring attorney asks whether he/she may withdraw from the representation of the driver, and take on the representation of the insured.

**OPINION:**

Rule 1.7 of the Rules of Professional Conduct prohibits the inquiring attorney from representing the insured in this matter whether or not the inquiring attorney withdraws from the representation of the driver. The inquiring attorney may withdraw from the representation of the driver if withdrawal can be accomplished without material adverse effect on the driver's interests or for any of the enumerated reasons in Rule 1.17(b), including good cause.

**REASONING:**

While the inquiring attorney never communicated with the driver and states that he/she did not acquire any confidential information from the driver, nevertheless, filing an answer on the driver's behalf constitutes representation. Rule 1.7 states in pertinent part:

**Rule 1.7. Conflict of Interest: General Rule.**

- (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.

The inquiring attorney is prohibited from representing the insured in this matter because the insured's interests are directly adverse to the interests of the inquiring attorney's client, the driver. Even in the unlikely event that the driver and the insured were to consent to the concurrent representation, the representation would not be permissible because the representation of one will, without question, adversely affect the attorney's relationship with the other. See Rule 1.7(a). The Rules make no provision for a lawyer who is faced with such a conflict to cure the conflict by abandoning a current client in order to take on the representation of an individual whose interests are adverse to that client. Withdrawal from representation of the driver in the instant inquiry will not place the conflicts problem within the rubric of conflicts with a former client under Rule 1.9. See Alabama State Bar Disciplinary Comm. Op. 92-21 (1992) (law firm may not represent one client against another even if subject matter of suits are unrelated, and withdrawal from representation of one client will not make situation a conflict with former client.)

This is not to say that the inquiring attorney may not withdraw from the representation of the driver. Pursuant to Rule 1.17(b) the inquiring attorney is permitted to withdraw if withdrawal can be accomplished without material adverse effect on the driver's interests or for any of the enumerated reasons in Rule 1.17(b), including good cause. The Panel notes, however, that because the attorney is the attorney of record in the pending litigation, his/her withdrawal is subject to the discretion of the court.

Accordingly, the Panel concludes that the inquiring attorney may withdraw from the representation of the driver under the Rules, but is prohibited from representing the insured under Rule 1.7 whether or not he/she withdraws from the representation of the driver.