

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion 98-07 - Request # 739
Issued - March 30, 1998**

Facts:

A law firm with which the inquiring attorney was previously associated seeks to collect outstanding attorneys fees from an individual who is now the inquiring attorney's client. During the time that the inquiring attorney was employed by the former firm, he/she represented a corporation in which the client was a shareholder and officer. Other lawyers in the firm also represented the corporation in several matters. After he/she left the law firm, the inquiring attorney, pursuant to the client's election, continued to represent the corporation in a pending bankruptcy proceeding, and also undertook the representation of the client in his/her individual capacity.

Although some of the outstanding fees that the former firm seeks to collect were generated when the inquiring attorney was employed by the former law firm, none of the fees are attributable to legal services that were personally provided by the inquiring attorney. The client claims that he/she is not personally liable for the outstanding fees which relate to legal services provided by the former firm to the corporation. The client has requested that the inquiring attorney represent him/her in the collection action. The inquiring attorney represents that he/she has no financial interest in the recovery should the former firm prevail in the collection suit.

Issue Presented

The inquiring attorney asks whether his/her representation of the client in the collection action is prohibited because of a conflict of interest.

Opinion:

Pursuant to Rule 1.7(b), the representation is permitted if the inquiring attorney reasonably believes that the representation will not be adversely affected by the inquiring attorney's own interests or by any responsibilities he/she may have to the former law firm. The inquiring attorney must disclose to the client such interests or responsibilities, and obtain the client's consent.

Reasoning:

The Rules of Professional Conduct impose on lawyers an ethical obligation of loyalty to clients. The rules that address conflict of interest protect clients and assure an attorney's loyalty. Thus, the inquiring attorney must consider whether the prior association with the former firm

will adversely affect his/her representation of the client. The pertinent rule is Rule 1.7(b) which states:

(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

The Panel is of the opinion that the mere fact that the inquiring attorney was employed by the former firm does not create a material limitation on the representation. However, the inquiring attorney's own interests or any responsibilities he/she may have to the former firm may impose limitations on the representation of the client. The Panel lacks sufficient information to determine whether any such interests or responsibilities exist which would materially limit the representation.

The Panel therefore concludes that pursuant to Rule 1.7(b) the inquiring attorney may represent the client in the collection action provided he/she reasonably believes that the representation will not be adversely affected by the lawyer's own interests or by any responsibilities the inquiring attorney may have to the former law firm. Although the client knows that the inquiring attorney is a former employee of the law firm, the inquiring attorney must disclose to the client any such interests or responsibilities, and thereafter must obtain the client's consent.

The Panel is of the opinion, however, that the representation would not be permitted if the inquiring attorney is a necessary witness regarding substantial issues in the dispute, or if his/her testimony would prejudice the client's interest. See, Rule 3.7 (lawyer shall not act as advocate and witness in trial of matter); Nassau County Bar Assoc. Comm. on Prof. Ethics Op. 91-13 (1991) (lawyer who worked on brother's legal matter while at former firm may later represent brother in that matter and in fee dispute with former firm unless she is a witness relating to substantial issues or her testimony prejudices client's interests.) The Panel cautions that the inquiring attorney has an obligation of confidentiality with respect to information relating to the representation of clients of the former firm.

The Panel's opinion speaks only to the Rules of Professional Conduct and does not address issues of substantive law such as privilege and disqualification which may arise in the instant situation.

