

Final

RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 98-11, Request No. 748
Issued June 11, 1998

Facts:

The inquiring attorney represented a local chapter of a union (union) with respect to contract and labor relations matters from 1988 to 1991 while an associate in a law firm. When he/she left the law firm in 1991, the union remained a client of the law firm. In 1995, two officers of the union consulted with the inquiring attorney about a pension claim, but the inquiring attorney was not retained by the union or any other party in that matter.

The inquiring attorney has recently entered his/her appearance as co-counsel on behalf of a former officer of the union who has filed a defamation suit against the union and its current officers. The pending action arises out of alleged statements made by union officials in 1997. The union, through its current president, has asked the inquiring attorney to withdraw from the representation by reason of a conflict of interest.

Issue Presented:

The inquiring attorney asks whether the Rules of Professional Conduct prohibit his/her representation of the union's former officer in the pending litigation.

Opinion:

The union is a former client of the inquiring attorney. Therefore, Rule 1.9 (Conflict of Interest: Former Client) applies. The representation of the union's former officer in the defamation suit is permitted because the matters are not the same or substantially related.

Reasoning:

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;

(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 interests of the union's former officer are materially adverse to the interests of the inquiring attorney's former client, the union. However, the contract and labor relations matters in which the inquiring attorney represented the union and the pending defamation suit relating to alleged statements made in 1997 are not the same or substantially related matters. Accordingly, the inquiring attorney's representation of the union's former officer is permissible without the union's consent. See R.I. Sup. Ct. Ethics Advisory Panel Op. 98-05 (1998). In accordance with Rule 1.9(b), the inquiring attorney must comply with the confidentiality rules and may not use confidential information obtained in the prior representation to the disadvantage of the union in the pending litigation.