

Final

Rhode Island Supreme Court
Ethics Advisory Panel
Opinion No. 98-13 Request No. 747
Issued October 15, 1998

Facts:

The inquiring attorney states that approximately 10 years ago, he/she represented the Buyer of a parcel of real estate. Prior to the closing, the inquiring attorney received a call from the Seller regarding the need to obtain a discharge of a private mortgage on the subject real estate. The inquiring attorney then prepared the discharge of the private mortgage and forwarded it to the mortgagee on behalf of Seller. The inquiring attorney also prepared the warranty deed on behalf of Seller. After the closing, the title company indicated that it was not satisfied with the release of a particular water easement, and so the inquiring attorney prepared a new release on Seller's behalf and had it executed. Seller paid the inquiring attorney for his services.

An adverse possession claim was recently filed against Buyer by Buyer's neighbors with respect to the subject real estate. The inquiring attorney has notified Seller of the problem and called upon Seller to pay the cost of defense because of the language in the warranty deed. The inquiring attorney has advised Buyer to add Seller as a third-party defendant under the warranties contained in the deed. Seller has recently written to the inquiring attorney claiming that the inquiring attorney should not be making any claim against him/her because the inquiring attorney represented Seller in the original transaction.

Issue:

May the inquiring attorney represent Buyer in a third-party action against Seller?

Opinion:

No. Rule 1.9(a) prohibits the inquiring attorney from representing Buyer in the claim against Seller.

Reasoning:

Rule 1.9 addresses conflicts of interest involving former clients. Rule 1.9(a) provides that a lawyer who has formerly represented a client in a matter shall not thereafter 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. In this case, it is clear that the former client has not consented. Indeed, the former client has issued a written objection to the inquiring attorney's continued representation of Buyer if the third-party action is to be brought against him/her.

The Panel would also remind the inquiring attorney that, in all likelihood, he/she will be a witness in the third-party action against Seller. Rule 3.7 would also prohibit the inquiring attorney from continuing to represent Buyer.