

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 99-05, Request No. 757
March 10, 1999**

Facts:

A and B, who are dating each other, each has a minor child that was sexually assaulted by B's father (the perpetrator). A and his child retained the inquiring attorney to represent them in a tort action against the perpetrator. The plaintiffs obtained a judgment against the perpetrator, whose only asset was a parcel of real estate which he owned jointly with his spouse, and which just prior to the commencement of the civil case he conveyed to his spouse. The spouse in turn listed the property for sale and has entered into a purchase and sale agreement with a buyer. On behalf of the plaintiffs, the inquiring attorney successfully prosecuted a claim for fraudulent conveyance and obtained a pre-judgment attachment on the property. At the present time, A, A's child, the perpetrator, his spouse, and the buyer are negotiating a settlement. The judgment in favor of A and A's child exceeds the perpetrator's and his spouse's equity in the real estate.

About a year before A's tort case was filed, B and B's child retained an attorney and instituted a criminal injuries compensation action seeking compensation from the State of Rhode Island pursuant to G.L. § 12-25-1 et seq. (the Act) for the sexual assaults upon B's child by the perpetrator. About a year and a half later, and while A's tort case against **the perpetrator** was pending, B retained the inquiring attorney to represent her in a Family Court petition for physical possession of the child. The court granted B and B's former spouse joint custody of the child and awarded physical possession to B. The inquiring attorney now represents B and B's child in the pending criminal injuries compensation action.

At a pre-trial conference of the criminal injuries compensation matter, the master raised concerns about whether it is in the best interests of the child for B to continue as a plaintiff because of B's relationship with A, and further because B did not bring a tort action on behalf of her child against her father. The inquiring attorney now questions whether he/she has a conflict of interest.

Issue Presented:

The inquiring attorney asks the following: (a) Does the inquiring attorney have a conflict of interest if he/she represents both B and B's child in the criminal injuries compensation matter? (b) Does either the relationship between A and B, or the state's right under the Act to

proceed against B's father whose only asset will be exhausted by the judgment in favor of A and A's child create a conflict of interest for the inquiring attorney in the representation of B and B's child in the criminal injuries compensation case and the representation of A and A's child in the tort case against B's father?

Opinion:

(a) The representation of both B and B's child in the criminal injuries compensation case is permissible under the Rules of Professional Conduct. (b) The inquiring attorney may represent A and A's child in the tort case, and B and B's child in the criminal injuries compensation action.

Reasoning:

Rule 1.7 regarding conflict of interest provides:

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.

(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.

There are no facts that lead the Panel to conclude that B and B's child have interests that are adverse, or that the inquiring attorney's responsibilities to one would materially limit the representation of the other. The representation of both is therefore permissible under Rule 1.7. Whether it is in the best interests of B's child for B to continue to serve as parent and next friend of the child in the criminal injuries case is a matter of substantive law outside the area of legal ethics.

In the Panel's view, the relationship between A and B does not create a conflict of interest for the inquiring attorney. The critical questions are whether the interests of A and A's child are directly adverse to the interests of B and B's child (Rule 1.7(a)), and whether the representation of B and B's child are materially limited by the inquiring attorney's responsibilities to A and A's child (Rule 1.7(b)). Based on the facts, the Panel is of the opinion that the interests of A and A's child are not directly adverse to those of B and B's child. Both sets of clients are seeking compensation for injuries caused by the same perpetrator, B's father. The Panel lacks sufficient facts to determine whether A's and A's child's judgment against the perpetrator and their subsequent attachment of his only asset are adverse to the interests of B's child or are material limitations to the representation of B's child. It does not otherwise appear that A or A's child, and B and B's child have claims against each other or adverse interests.

If compensation is awarded to B or B's child pursuant to the Act, the state has the right to proceed against the perpetrator for recovery of all or part of the funds. See G.L. §12-25-26. The perpetrator's only asset is the real estate on which there exists an attachment for the benefit of A and A's child. The state, and not B or B's child, would have an interest in the perpetrator's assets. Moreover, an award of compensation to B under the Act is not contingent upon the state's success in recovering from the perpetrator. The fact that the state's right of recovery against the perpetrator is substantially limited by A's and A's child's judgment and attachment does not create a conflict of interest in the inquiring attorney's representation of B and B's child.

Based on the facts as presented the Panel concludes that Rule 1.7 does not preclude the inquiring attorney from representing B and B's child in the criminal injuries compensation case

and A and A's child in the tort case against B's father. The Panel's advice is provided for the benefit of the inquiring attorney for the purpose of avoiding disciplinary action. It is not binding on a tribunal which

has unfettered authority to render an independent decision on the propriety of the inquiring attorney's representation of B and B's child. See O'Rourke v. Power, 690 A.2d 342 (R.I. 1997).