

Final

**Rhode Island Supreme Court  
Ethics Advisory Panel  
Opinion No. 99-08, Request No. 758  
Issued May 13, 1999**

Facts:

The inquiring attorney has a general law practice concentrated in securities matters. He/she is also duly licensed as an “investment adviser representative” of an “investment adviser,” and as a “sales representative” of a “broker-dealer” as those terms are defined in the Rhode Island Uniform Securities Act. The inquiring attorney states that this means that he/she may provide financial planning and investment advice for a fee (hourly, by transaction, or based on a percentage of assets under management), and that he/she may execute transactions in securities for a client and be paid a commission or a sales charge.

The inquiring attorney plans to conduct an investment advisory business and to practice law simultaneously. The investment adviser and broker-dealer with whom the inquiring attorney will be associated in the investment advisory business is also the inquiring attorney’s law client. A prospective client has sought legal advice about contract, employment, and other matters relating to the client’s corporation. The client also has asked the inquiring attorney to draft wills for him and his spouse, and to provide them investment advice in connection with retirement planning.

Issues Presented:

The inquiring attorney asks (A) whether he/she may provide both legal services and investment services to the prospective client; (B) whether there are limitations under the Rules of Professional Conduct on his/her legal representation of his/her business associate or other investment professionals; and (C) whether he/she may accept referrals of law clients from his/her business associate, and may refer law clients to his/her business associate for investment services.

Opinion:

(A) The Panel advises that the inquiring attorney not provide both legal services and investment services to the prospective client. (B) The inquiring attorney may represent the business associate and other investment professionals provided Rule 1.7(b) and/or Rule 1.8(a) are satisfied. (C) The inquiring attorney may accept referrals of law clients from his/her business associate, and may refer his/her law clients to his/her business associate for investment services.

Reasoning:

A. Dual Practice

The Rules of Professional Conduct permit lawyers to practice law and engage in other businesses or professions simultaneously. In all such cases, the Rules relating to confidentiality, conflict of interest, transacting business with clients, advertising, and soliciting employment must be observed. See R.I. Sup. Ct. Ethics Advisory Panel Op. 96-26. The separate nature of the law practice and the other business or profession must be made clear to the public.

In Ethics Advisory Panel Opinion 96-26, the Panel advised an attorney who is an insurance broker of life, health, and accident insurance that the Rules of Professional Conduct do not permit him/her to provide estate planning legal services to his/her insurance customers or sell insurance products to his/her estate planning clients. The rationale set forth in Ethics Advisory Panel Opinion 96-26 is applicable to the instant inquiry and the Panel refers the inquiring attorney to that opinion.

The Panel recognizes that unlike the attorney-insurance broker who is affiliated with a limited number of insurance companies, the inquiring attorney's available market of investments includes all stocks, bonds, mutual funds and other securities. Notwithstanding the unlimited range of possible investments, the relationship between clients and the investment professional is nevertheless transaction-oriented giving rise to interests that differ. The Panel believes that where a lawyer has a financial interest in a client's investment decisions, the lawyer's independent professional judgment in recommending investments or investment management would unavoidably and impermissibly be affected by the lawyer's personal interest in managing and selling investments. See R.I. Sup. Ct. Ethics Advisory Panel Opinion 96-26. "Given this inherent conflict, the requirements of fairness and reasonableness to the client imposed by Rule 1.8(a) are impossible to satisfy." Id. The Panel therefore advises that the inquiring attorney may not provide both legal services and investment services to the prospective client.

B. Business Transaction with Client and Representation Conflicts.

Adding to the numerous ethics issues raised by the dual practice of law and another profession, the inquiring attorney proposes to conduct his investment advisory business with a current law client. Prior to forming the business association described, the inquiring attorney must satisfy the requirements of Rule 1.8. See In the Matter of Scott, 694 A.2d 732 (R.I. 1997). Rule 1.8 provides in pertinent part:

Rule 1.8 Conflict of Interest: Prohibited Transactions -

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

The inquiring attorney, therefore, must inform the client of their conflicting interests and potential conflicts of interest, advise the client to obtain independent counsel regarding the business association, and otherwise comply with the requirements concerning fairness, client consent, and confidentiality. He/she may continue to represent the client-business associate in legal matters, but in light of his own related business interests, must satisfy Rule 1.7(b) which states:

Rule 1.7. Conflict of Interest: General Rule. -

(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.

The inquiring attorney must therefore determine whether the representation of this client is materially limited by his/her own business interests. If so, he/she must obtain the client's consent to the representation after consultation, but only if he/she reasonably believes that the representation will not be adversely affected. In continuing to represent the legal interests of his/her business associate, the inquiring attorney maintains a fiduciary relationship with the associate. As such, he/she will owe the associate a higher duty than is required in ordinary business transactions, and has continuing obligations under Rule 1.8. The same considerations under Rule 1.7(b) apply to the inquiring attorney's legal representation of other investment professionals.

C. Referrals.

Consistent with Rule 7.2(c), the inquiring attorney may accept referrals of law clients from his/her business associate, but he/she is not permitted to pay the associate for channeling legal work to him/her, or to give anything of value in return. He/she may not agree to accept referrals in exchange for referring law clients to the associate for investment services. See R.I. Sup. Ct. Ethics Advisory Panel Op. 96-25. Pursuant to Rule 1.7(b), the inquiring attorney must disclose the business relationship, including any financial interests, and obtain the client's consent.

If the inquiring attorney undertakes the legal representation of a client who is also in need of investment services such as the prospective client described, the inquiring attorney may refer the client to his/her business associate provided he/she satisfies Rule 1.8(a). He/she may accept a referral fee if such is permitted by rules and the law governing the other business, but pursuant to Rule 1.8(a), must disclose that fact to the client. See Conn. Bar Assoc. Comm. On Prof. Ethics, Informal Op. 97-16 (1997).

If the inquiring attorney chooses instead to provide investment services to the client, he/she may inform the investment client when he/she believes that the client should consult a lawyer, and advise the client to consult with independent counsel. The inquiring attorney may not refer an investment client to another lawyer and receive a referral fee or otherwise share the fee. See Pa. Bar Assoc. Comm. On Legal Ethics & Resp., Op. 97-101 (1997).

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under Chapter 11 of Title 7 of the Rhode Island General Laws, or to any rules, regulations or other law that may have a bearing on the issues raised in this inquiry.

