

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 99-09, Request No. 778
Issued May 13, 1999**

Facts:

The inquiring attorney, Attorney A, has a sole law practice. He/she also is affiliated with Attorney B on an "of counsel" basis as needed. The attorneys maintain separate offices in different municipalities, and do not have access to each other's client files.

Attorney B simultaneously is a broker of professional practices and businesses. When acting in his/her capacity as a broker, Attorney B refrains from performing related legal services and refers business clients to Attorney A. The attorneys do not share the legal fees.

Issue Presented:

The inquiring attorney asks whether he/she is precluded from performing legal services for Attorney B's business clients as a result of the "of counsel" affiliation.

Opinion:

Attorney B's conflicts of interest are not imputed to Attorney A under these facts and therefore, the inquiring attorney is not precluded from providing legal services for Attorney B's business clients.

Reasoning:

Attorney B has conflicts of interest under the Rules of Professional Conduct which would preclude him/her from providing related legal services to his/her business clients. See R.I. Sup. Ct. Ethics Advisory Panel Op. 96-26 (attorney-insurance broker may not sell life, disability or health insurance to estate planning law clients and may not provide estate legal services to insurance customers); R.I. Sup. Ct. Ethics Advisory Panel Op. 96-29 (attorney/real estate broker may not provide legal services to seller or buyer for whom he/she serves as real estate broker.)

Rule 1.10 entitled "Imputed Disqualification: General Rule" provides in pertinent part:

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

Whether two or more lawyers constitute a firm for purposes of Rule 1.10 depends on the specific facts. See Comment to Rule 1.10. The terms of any formal agreement between the attorneys are relevant in determining whether they are a firm, as is the fact that they have mutual access to client information. Id. Although the inquiring attorney states that he/she is affiliated with Attorney B on an "of counsel" basis as needed, the facts disclose that the two attorneys maintain separate offices, have separate law practices, and do not have access to each other's client files.¹ Based on the facts as presented, the Panel is of the opinion that the conflicts of interest of Attorney B are not imputed to Attorney A, and that Attorney A may represent the business clients of Attorney B. Before so doing, Attorney A must independently consider whether his/her affiliation with Attorney B would be a material limitation on the representation pursuant to 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.

If the representation is materially limited by the affiliation, Attorney A may represent a business client of Attorney B provided he/she reasonably believes the representation will not be affected and provided also that he/she obtains the client's consent after consultation.

¹ The designation "of counsel" generally applies to a close, regular, personal relationship that is neither that of a partner nor an associate, such as a part-time practitioner, a retired partner who remains associated with a firm, a probationary partner-to-be, or the permanent status in between partner and associate but having the quality of tenure. See ABA Standing Comm. On Ethics and Professional Responsibility, Formal Op. 90-357 (1990).

Accordingly, the Panel concludes that Attorney A is not precluded by Rule 1.10(a) from representing business clients of Attorney B, but must determine whether he/she otherwise has a conflict of interest pursuant to Rule 1.7(b) before undertaking the representation.