

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 99-12, Request No. 782
Issued May 13, 1999**

Facts:

The inquiring attorney is seeking the Panel's advice on behalf of his/her law firm. The facts are as follows. Lawyers who are presently members of the law firm represented Company A while they were associated with another firm. The lawyers represented Company A in three environmental waste disposal matters in which state and federal governments were seeking environmental remediation costs for three separate sites. All the matters concluded by 1991 at which time the lawyers' representation of Company A also terminated. During the course of the representation, the lawyers acquired information from Company A regarding, among other things, its waste disposal practices.

Several months ago, the Department of Environmental Management sent "notice letters" to about twenty-five companies, alleging that waste generated by the companies was improperly disposed of at a certain landfill, and that the companies are responsible for environmental remediation at that site. Company B and Company C, which are current clients of the inquiring attorney's law firm, received notice letters. Company A also received a notice letter. The landfill is a separate site from the three sites involved in Company A's former environmental remediation matters. Company B and Company C seek representation by the inquiring attorney's law firm in the landfill remediation matter. Company B and Company C have consented to the dual representation by the law firm.

Issue Presented:

May the law firm represent Company B and Company C in the recent landfill matter without obtaining the consent of Company A?

Opinion:

No. Under Rule 1.9, the lawyers who represented Company A have a conflict of interest in the representation of Company B and Company C. The interests of Company B and Company C are materially adverse to Company A, and the matters are substantially related. Pursuant to Rule 1.10(b), the conflict of interest of Company A's previous lawyers is imputed to the other lawyers in the inquiring attorney's law firm. Therefore lawyers in the firm may only represent Company B and Company C in the landfill remediation matter if they obtain the consent of Company A after consultation.

Reasoning:

Company A is a former client of the individual lawyers who represented it while they were associated with another firm. Therefore Rule 1.9 applies. The rule states:

Rule 1.9. Conflict of Interest: Former Client. - 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; or
- (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.

Liability for clean up costs at the landfill is no doubt proportional to the amount of waste disposal attributed to each company. It appears then that the interests of Company B and Company C are materially adverse to Company A. A crucial issue under Rule 1.9 is whether or not the matter in which a lawyer represented a former client is "the same or substantially related" to the matter in which he/she proposes to represent a current client. While the landfill site is a different site from those three sites involved in Company A's prior remediation matters, the Panel is of the opinion that the subject matter of the present and prior representations is substantially related. Both representations involve issues relating to Company A's waste disposal practices about which the lawyers acquired information during the prior representation. Because the interests of Company B and Company C are materially adverse to Company A, and further because the matters are substantially related, the Panel concludes that Company A's previous lawyers have a conflict of interest in the representation of Company B and Company C.

Company A's previous lawyers have actual knowledge about the company's waste disposal practices and other related information. Therefore, pursuant to Rule 1.10, the conflict of interest of Company A's previous lawyers is imputed to other lawyers at the firm with which they are now associated. Rule 1.10 states in pertinent part:

Rule 1.10. Imputed Disqualification: General Rule. -

(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.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

The Panel concludes that lawyers in the inquiring attorney's law firm may represent Company B and Company C in the landfill remediation matter provided they obtain the consent of Company A after consultation. The Panel notes that even with a former client's consent lawyers are prohibited from using information relating to the prior representation to the disadvantage of the former client. See Rule 1.9(b) and Rule 1.10(b).