

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2004-04 Request No. 883
Issued May 27, 2004

Facts:

The inquiring attorney was retained by an individual for legal services related to the formation of a corporation in 1999. The inquiring attorney provided the services and billed the client. The attorney continued to provide other services over the next several months. When the client failed to respond to correspondences from the attorney about matters relating to the corporation and the past due fees, the attorney sent the client correspondences requesting that the client pick up the corporation's book and records. The client never retrieved the documents.

About a year after the inquiring attorney's last correspondence, the inquiring attorney received a letter from an attorney on behalf of the client requesting that all the corporation's books and papers be sent to the client's new attorney. The inquiring attorney responded that all corporate materials were available to be picked up at his office at the convenience of the client or his/her attorney. To this day, no one has picked up the material.

In 2002 an individual who had performed construction work for the inquiring attorney's former client contacted the inquiring attorney and requested that the inquiring attorney represent him/her in the collection of monies that were past due from the former client. The inquiring attorney commenced suit. Counsel for the former client asserts that the inquiring attorney has a conflict of interest because he/she represented the former client, because the former client referred other clients to him/her, and because he/she continues to bill the former client for amounts past due.

Issue Presented:

Does the inquiring attorney have a conflict of interest in the representation of his/her current client?

Opinion:

There is no conflict of interest under the Rules of Professional Conduct. The collection matter of the inquiring attorney's current client is not substantially related to the corporate matter of the former client, and the interests of the clients are not adverse.

Reasoning:

The representation of the former client terminated before the inquiring was retained by the new client. Therefore Rule 1.9 entitled "Conflict of interest: Former client" applies. The rule states:

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.

The collection matter of the inquiring attorney's current client is not substantially related to the corporate matters of the former client; and the respective interests of the current client and the former client are not adverse. None of the bases on which the former client's current counsel asserts a conflict of interest satisfies the test of Rule 1.9. The Panel concludes that the inquiring attorney's representation of his/her client is permissible.

The Panel advises that in compliance with Rule 1.9(b), the inquiring attorney shall not use any information related to the representation of the former client to the disadvantage of the former client in the representation of the new client.