Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2002-03 Request No. 838
Issued February 14, 2002

FACTS:

The inquiring attorney represented a school committee during the termination hearing of an individual. The attorney assisted the committee with evidentiary rulings and provided legal advice during executive session. By a majority vote, the school committee voted to uphold the individual's termination. Following a successful appeal, the individual filed a lawsuit against the school committee and various persons, including the members of the school committee in their individual and in their official capacities. The school committee has retained another attorney to represent it in the lawsuit. Two members of the committee have requested that the inquiring attorney represent them in their individual capacities. The inquiring attorney states that the two members did not vote to terminate the individual, and that their interests are potentially adverse to the majority.

ISSUES PRESENTED:

The inquiring attorney asks whether he/she or any other lawyer in his/her law firm may represent the two individuals.

OPINION:

The inquiring attorney has a conflict of interest pursuant to Rule 1.9 which is imputed to other lawyers in his/her firm. Therefore representation of individual committee members by the inquiring attorney or his/her law firm is prohibited, unless the school committee consents.

REASONING:

The school committee is the inquiring attorney's former client. Therefore, Rule 1.9 applies. It 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.

The interests of the individual members of the school committee who did not vote in favor of the termination are adverse to the interests of the school committee as a whole. The pending lawsuit is "the same or substantially related" to the prior termination hearings. The Panel concludes that absent consent by the school committee, Rule 1.9 prohibits the inquiring attorney from representing individual members of the school committee whose interests are or may be adverse to the school committee.

Rule 1.10(a) states, "[w]hile 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." Pursuant to Rule 1.10(a) the inquiring attorney's conflict of interest under Rule 1.9 is imputed to other lawyers in the inquiring attorney's law firm. Accordingly, the Panel advises the inquiring attorney and other lawyers in his/her firm to decline the representation.