Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2025-2
Issued February 18, 2025

FACTS

The inquiring attorney has received a client referral to represent an entity in an adversarial matter before one of the Supreme Court's boards. However, the inquiring attorney's law partner is a sitting member of the board before which the prospective client will appear. According to the inquiring attorney, his or her law partner did not serve on the board's screening panel which found probable cause against the prospective client and has no knowledge of the matter or the underlying facts. The law partner has indicated to the inquiring attorney that he or she will recuse himself or herself entirely from the matter before the board should the inquiring attorney choose to represent the entity. Additionally, the inquiring attorney represents that the law partner will be screened off from knowledge of or participation in the representation and will not share in any fees generated as a result of the representation.

ISSUE PRESENTED

The inquiring attorney asks whether he or she is precluded under the Rules of Professional Conduct from accepting representation of the prospective client?

OPINION

It is the Panel's opinion that the inquiring attorney is not precluded under the Rules of Professional Conduct from accepting representation of the prospective client.

REASONING

The factual situation as described by the inquiring attorney implicates Rules 1.7 and 1.10 of the Rules of Professional Conduct. Rule 1.7 pertains to conflicts of interest:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) each affected client gives informed consent, confirmed in writing.

"Rule 1.7 is grounded primarily upon the attorney's duty of loyalty to his or her client." Markham Concepts, Inc. v. Hasbro, Inc., 196 F. Supp. 3d 345, 349 (D.R.I. 2016) (interpreting Rhode Island Rule of Professional Conduct 1.7). "Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing." Rule 1.7, Comment [2].

Rule 1.10 concerns imputation of conflicts of interest:

> (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 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
>
> (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
>
> (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
>
> (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
>
> (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

> (1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
> (2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.
>
> (d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
>
> (e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

On its face, the factual situation as described by the inquiring attorney constitutes a concurrent conflict of interest under Rule 1.7. The prospective client has been called to appear before a Supreme Court board in an adversarial matter. The inquiring attorney's law partner is a current and active member of this board. Accordingly, pursuant to Rule 1.7(a)(2) the law partner could not represent the prospective client because such representation would be materially limited by his or her duty to the board. <u>See</u> Rule 1.7, Comment [8] (recognizing that "a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests"). The conflict would be nonconsentable because there are no circumstances under which the law partner could provide competent and diligent representation to the prospective client. <u>See</u> Rule 1.7(b)(1), Rule 1.10(a); <u>see also</u> Rule 1.7, Comment [14] (noting that "under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation"). Such disqualification would be imputed to the inquiring attorney under Rule 1.10(a) because of his or her professional association with the law partner. <u>See</u> Rule 1.10, Comment [1] (observing that Rule 1.10(a) is based on "the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated").

However, the inquiring attorney has indicated that his or her law partner intends to recuse himself or herself from the matter before the board should the inquiring attorney choose to represent the prospective client. Such recusal would remove the law partner entirely from hearing or considering the matter. Concomitantly, the inquiring attorney has stated that the law partner will be screened from any knowledge of or participation in the representation and would not share in any fees generated therefrom. These measures would have the collective effect of ameliorating the facts giving rise to the underlying conflict of interest because the representation would no longer be materially limited by the law partner's board membership. <u>Cf.</u> Rule 1.7, Comment [8] (stating that "[t]he critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client"). As such, no conflict of interest would be imputed to the inquiring attorney, permitting him or her to represent the prospective client before the board. <u>See</u> Rhode Island Supreme Court Ethics Advisory Panel Op. 89-22.