Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2025-4
Issued March 13, 2025

FACTS

The inquiring attorney describes himself or herself as a sole practitioner who associates with two (2) other attorneys in a "hybrid" practice model in which the other attorneys maintain their own clients and practices but sometimes perform work for the inquiring attorney as independent contractors. Each attorney receives compensation for their work for the inquiring attorney, but the inquiring attorney affirms that he or she does not share in the income from such work. The Panel notes that the inquiring attorney and the two (2) other attorneys are all listed on the inquiring attorney's letterhead with a single physical address, website address, telephone number, and fax number, and all have individual email addresses from the same domain.

One (1) of the two (2) other attorneys (the "Associate") serves as an assistant solicitor for one of Rhode Island's municipalities (the "Town"). In this capacity, the Associate assists the Town's "chief" solicitor with criminal prosecutions in the District Court. The inquiring attorney represents that he or she has no professional connection to the Town.

The inquiring attorney currently represents a client with two (2) pending misdemeanor charges brought by the Town's police department. The inquiring attorney states that he or she has not scheduled the matter on any day in which the Associate is covering the prosecution calendar for the Town. The Associate has also agreed to avoid involvement in the case or access the case file. Notwithstanding, the Town's "chief" solicitor has suggested that the inquiring attorney has an "inherent" conflict of interest precluding his or her representation of the client.

ISSUE PRESENTED

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

OPINION

It is the Panel's opinion that the inquiring attorney is not precluded under the Rules of Professional Conduct from representing the 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
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> (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.
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> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
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> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
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> (2) the representation is not prohibited by law;
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> (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
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> (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.
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> (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
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> (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
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> (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:
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> (1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
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> (2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.
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> (d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
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> (e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

As an initial matter, the Panel must first determine whether the inquiring attorney and the Associate are "associated in a firm" under the Rules of Professional Conduct before it may properly address the inquiring attorney's underlying conflict of interest question. Rule 1.0(c) defines "firm" to mean "lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization." See also Rule 1.10, Comment [1]. Comment [2] to Rule 1.0 clarifies that "[w]hether two or more lawyers constitute a firm . . . can depend on the specific facts." For example, "any two or more lawyers who, by signs, letterhead, or any form of advertising, list their names in succession will likely be regarded as a firm for the purposes of these Rules, notwithstanding disclaimers such as 'an association of independent attorneys.'" Id. Here, the inquiring attorney and the Associate are both listed on the inquiring attorney's letterhead with a single physical address, website address, telephone number, and fax number, and both have individual email addresses from the same domain. Therefore, the Panel finds that they are considered a "firm" for the purposes of this advisory opinion.

Moving to the underlying conflict of interest question, the facts as described by the inquiring attorney appear, at first blush, to constitute a concurrent conflict of interest under Rule 1.7. The inquiring attorney's client has two (2) pending misdemeanor charges filed by the Town's police department, which charges are heard in the District Court. The Associate currently serves as an assistant solicitor for the Town, helping with criminal prosecutions in the District Court. Accordingly, pursuant to Rule 1.7(a)(1) the Associate could not represent the client because such representation would be directly adverse to his or her representation of the Town in District Court matters. See Rule 1.7, Comment [6]. It would also be materially limited by his or her duty to the Town as an assistant solicitor pursuant to Rule 1.7(a)(2). See Rule 1.7, Comment [8]. These conflicts would not be consentable because there are no circumstances under which the Associate could provide competent and diligent representation to the client. See Rule 1.7(b)(1), Rule 1.10(a);

see also 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 as discussed above. See 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").

Notwithstanding, other facts militate against finding the existence of a conflict here. The inquiring attorney has indicated that the Associate has neither read the case file nor participated in the matter in any way in his or her role as assistant solicitor for the Town. The inquiring attorney has also averred that he or she has been careful to avoid scheduling the matter on any day when the Associate is covering the prosecution calendar. Finally, the structure of the inquiring attorney's "hybrid" practice seemingly ensures that the Associate would be screened off from any information about or fees generated from the representation. Taken together, these facts effectively mitigate the underlying conflict of interest because the representation is neither directly adverse nor materially limited by the Associate's service as assistant solicitor. Cf. 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"). The Panel concludes, accordingly, that no conflict of interest is imputed to the inquiring attorney such that he or she may continue to represent the client. See Rhode Island Supreme Court Ethics Advisory Panel Op. 25-02.