

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2025-5
Issued May 8, 2025**

FACTS

The inquiring attorney formerly worked for a law firm that represents school districts in a variety of legal matters, including disputes relating to special education. The inquiring attorney did not participate in any special education matters during his or her time at the firm; rather, he or she provided legal research to partners in a supporting role, handled public records requests, and occasionally appeared at hearings and other proceedings on behalf of clients.

Now at a new firm, the inquiring attorney wishes to represent parents and guardians in special education disputes with school districts. He or she has received a client referral, of a guardian concerned that his or her grandchild's educational rights are being violated (the "Client"). The school district in question (the "Town") is currently a client of the inquiring attorney's former firm and was so during the inquiring attorney's tenure there. The inquiring attorney reports that he or she did not handle any matters for the Town during his or her time at the former law firm and has no independent knowledge of the Client's matter.

ISSUE PRESENTED

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

OPINION

It is the Panel's opinion that the inquiring attorney is not prohibited under the Rules of Professional Conduct from representing the Client.

REASONING

This inquiry implicates Rule 1.9, pertaining to duties to former clients:

(a) A lawyer who has formerly represented a client in a matter shall not thereafter 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 gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Of particular relevance to here is Rule 1.9(b), which prohibits an attorney from representing a prospective client when three (3) factors are met. First, the matter must be the same or substantially related to one in which the attorney's former firm had previously represented a client. Second, the former client's interests must be materially adverse to those of the prospective client. Third, the attorney must have acquired information about the former client protected by Rules 1.6 and 1.9(c) that is material to the matter. The prohibition in Rule 1.9(b) may only be overcome by obtaining the written informed consent of the former client.

While there is no question that the Client's and Town's interests are necessarily adverse given the nature of the parties' dispute regarding the Client's grandchild's educational rights, it is unclear from the facts as described by the inquiring attorney whether the Client's matter is the same or substantially related to one in which the inquiring attorney's former firm represented the Town. Even if it is, however, the facts indicate that the inquiring attorney never handled any matters for the Town during his or her time at the former firm, including the Client's case, and has no independent knowledge of the matter. Therefore, the third element cannot be met. See Rule 1.9, Comment [5] (recognizing that "Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c)"); see also Rhode Island Supreme Court Ethics Advisory Op. 2012-07 (observing that "[t]he test for [this element] is not whether an attorney remembers the case, the client, or the specific facts of the case. Rather, the requirement . . . is met if the lawyer ha[s] actually acquired material information while at the former law firm").

Accordingly, the Panel concludes that the inquiring attorney may represent the Client without needing to obtain the informed written consent of the Town. See Rhode Island Supreme Court Ethics Advisory Op. 97-10; Rhode Island Supreme Court Ethics Advisory Op. 94-71.