Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2025-6
Issued May 8, 2025

<u>FACTS</u>

The inquiring attorney is a member of the board of a local non-profit organization (the "Entity"). The Entity has been sued for personal injuries sustained at an event held by the Entity in August 2022, when a firework launched by a professional fireworks company allegedly malfunctioned and shot toward the crowd before exploding. The inquiring attorney did not attend the event in question. He or she wishes to represent the Entity in the litigation.

<u>ISSUE PRESENTED</u>

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

<u>OPINION</u>

It is the Panel's opinion that the inquiring attorney is not prohibited under the Rules of Professional Conduct from representing the Entity, provided that he or she believes the representation will not be materially limited by his or her responsibilities to the Entity, or that he or she otherwise complies with Rule 1.7(b).

<u>REASONING</u>

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). Among other purposes, Rule 1.7 is intended to ensure that "'a lawyer's range of options is not materially limited by other interests or responsibilities which might impair the lawyer's ability to consider, recommend, or carry out an appropriate course of action.'" Rhode Island Supreme Court Ethics Advisory Op. 93-80 (quoting Annotated Model Rules of Professional Conduct, 114 (2nd ed. 1992)).

In this case, the inquiring attorney is a member of the Entity's board and seeks to represent the Entity in litigation. Comment [34] to Rule 1.7 squarely addresses this scenario in detail and is worth including in full:

> A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Accordingly, the representation contemplated by the inquiring attorney is permissible under Rule 1.7(a) if he or she believes that the representation will not be materially limited by his or her responsibilities to the Entity in the manner described in Comment [34]. See Rhode Island Supreme Court Ethics Advisory Op. 93-80. Otherwise, the representation is prohibited unless the inquiring attorney complies with the requirements of Rule 1.7(b), including obtaining the written informed consent of the Entity.[1] See Rule 1.7, Comment [19] (setting forth the requirements for obtaining written informed consent from a client); see also Rule 1.0(e) (defining "informed consent").

[1] Should the inquiring attorney take on the representation, he or she must strictly comply with Rules 1.8 and 1.13.