

## **Final**

### **Rhode Island Supreme Court Ethics Advisory Panel Op. 2025-8 Issued July 10, 2025**

#### **FACTS**

The inquiring attorney provides real estate transaction services to a certain mortgage broker (the “Broker”). The Broker wishes for the inquiring attorney to become its resident agent pursuant to G.L. 1956 §§ 5-38-26 and 27-5-3.3, which would authorize the inquiring attorney to receive insurance claim checks relating to property damage made payable jointly to the insured and the Broker as mortgagee, endorse such checks on behalf of the Broker, and disburse the funds in accordance with the terms of the mortgage and applicable state law, including implementing any escrow requirements for repairs or restoration. To this end, the Broker has asked the inquiring attorney to sign an agreement appointing him or her as its resident agent. The inquiring attorney wishes to accept this position but is unsure if doing so is allowed under the Rules of Professional Conduct.

#### **ISSUE PRESENTED**

The inquiring attorney asks whether the Rules of Professional Conduct permit him or her to become the Broker’s resident agent?

#### **OPINION**

It is the Panel’s opinion that the inquiring attorney may become the Broker’s resident agent, subject to the limitations and restrictions imposed by applicable Rules of Professional Conduct.

#### **REASONING**

Rule 5.7 pertains to a lawyer’s responsibilities when providing or engaging in law-related services:

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer’s provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term “law-related services” denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

“When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems . . . [such as] the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship.” Rule 5.7, Comment [1]. Rule 5.7 “identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services.” Rule 5.7, Comment [2].

In this case, the Broker has asked the inquiring attorney to serve as its resident agent, which would authorize the inquiring attorney to receive insurance claim checks relating to property damage made payable jointly to the insured and the Broker as mortgagee, endorse such checks on behalf of the Broker, and disburse the funds in accordance with the terms of the mortgage and applicable state law, including implementing any escrow requirements for repairs or restoration. The Panel finds that these activities constitute law-related services as described under Rule 5.7(b) because they may be performed in conjunction with and in substance are related to the inquiring attorney’s provision of real estate transaction services for the Broker.<sup>1</sup> See Rule 5.7, Comment [9] (defining “law-related service” to encompass “providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting”). The Panel concomitantly finds that because these activities are closely related to the real estate transaction services which the inquiring attorney already provides to the Broker, the inquiring attorney would be subject to the Rules of Professional Conduct when undertaking them pursuant to Rule 5.7(a)(1). See Rule 5.7, Comment [3] (recognizing that “[w]hen law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer’s provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1)”; see also Rule 5.7, Comment [8] (noting that the Rules of Professional Conduct apply in “circumstances [where] the legal and law-related services [are] so closely entwined that they cannot be distinguished from each other . . .”).

Comment [10] to Rule 5.7 identifies those Rules of Professional Conduct most implicated by a lawyer’s provision of law-related services to clients:

[T]he lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation.

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<sup>1</sup> In reaching this conclusion, the Panel finds it significant that a person need not be a lawyer to serve as a resident agent under either G.L. 1956 §§ 5-38-26 or 27-5-3.3.

See also Rhode Island Supreme Court Ethics Advisory Panel Op. 96-26 (observing, in matters involving business transactions between lawyers and clients regulated by Rule 1.8(a), that “the Rules of Professional Conduct relating to transacting business with clients, advertising, soliciting legal employment, conflicts of interest, and confidentiality must be observed”). Particularly relevant here is Rule 1.7, pertaining 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].

Under Rule 1.7(a)(2), a lawyer is prohibited from representing a client if there is a significant risk the representation will be materially limited by the lawyer’s responsibilities to another client or third person, or by a personal interest of the lawyer. It follows that a lawyer should not allow his or her representation of a client to be materially limited by his or her provision of law-related services to that client. Nor should a lawyer providing law-related services that are subject to the Rules of Professional Conduct allow the provision of those services to be materially limited by his or her responsibilities as a lawyer. See Rhode Island Supreme Court Ethics Advisory

Panel Op. 96-26 (determining that an attorney who also sold insurance was not permitted under the Rule 1.7 to sell insurance to his or her legal clients or provide legal services to his or her insurance customers).

Here, it is possible that aspects of the inquiring attorney's ongoing representation of the Broker in real estate transactions, such as the fee charged, the advice and/or candor given, and/or the decisions made on how to proceed, could be influenced by the inquiring attorney's personal interest in operating as, and remaining, the Broker's resident agent. Concurrently, it is equally possible that the inquiring attorney's provision of resident agent services could be affected or circumscribed by his or her duties in representing the Broker. Such conflicts are nonconsentable, despite the presence of a written, signed instrument in the form of the resident agent agreement provided by the Broker, because it would be impossible for the inquiring attorney to provide competent and diligent representation to the Broker under either scenario. See Rule 1.7, Comment [14]. The Panel therefore concludes that the inquiring attorney cannot serve as resident agent for any matter in which he or she provided legal services to the Broker, nor can he or she provide legal services to the Broker in any matter in which he or she serves as resident agent. See Rhode Island Supreme Court Ethics Advisory Panel Op. 96-26.