Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2025-12
Issued October 9, 2025

FACTS

The inquiring attorney represented a client in a complicated federal bankruptcy matter that has since concluded.[1] The trustee appointed to represent the bankruptcy estate now claims that the inquiring attorney engaged in malpractice during the representation, such that a conflict of interest exists requiring the inquiring attorney to terminate his or her representation of the client. The inquiring attorney vociferously denies the trustee's claims. In addition, the client wishes for the inquiring attorney to continue to represent him or her. According to the inquiring attorney, the trustee has not currently filed or otherwise initiated a malpractice suit or action in furtherance of his or her claims.

ISSUE PRESENTED

The inquiring attorney asks whether a conflict of interest exists such that he or she must terminate his or her representation of the client?

OPINION

It is the Panel's opinion that a conflict of interest does not exist under the facts as described by the inquiring attorney.

REASONING

Rule 1.7 pertains to concurrent 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:
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> (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.

[1] The client also faced certain related legal issues in Tennessee for which he consulted with local Tennessee counsel.

> (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].

The resolution of this inquiry turns on whether a conflict of interest exists between the inquiring attorney and his or her client. Relevant here is Rule 1.7(a)(2), which establishes in pertinent part that a conflict of interest exists when "there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer." In this case, the inquiring attorney has a personal interest in, among other things, avoiding or minimizing his or her malpractice liability. Such an interest can, under appropriate circumstances, create a conflict between the inquiring attorney's and client's interests. See Rule 1.7, Comment [10] (observing that "if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice").

However, several factors militate against finding a conflict here. First, the malpractice allegations originate with a third party rather than the inquiring attorney's client, indicating that their interests are not adverse. Indeed, the inquiring attorney reports that the client wishes for him or her to continue in the representation. Second, and more significantly, no malpractice suit or other action has been filed against the inquiring attorney. Accordingly, his or her potential liability is purely speculative at this time, such that no conflict-causing "personal interest" presently exists.

The Panel therefore concludes that a bare malpractice allegation, absent the attendant filing of a suit or other action, does not amount to a "personal interest" creating a conflict of interest requiring withdrawal from a representation under Rule 1.7(a)(2). To find otherwise would be tantamount to endorsing a form of legal coercion where the mere voicing of a malpractice allegation is sufficient to compel the termination of an attorney-client relationship.