

Final

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

FACTS

The inquiring attorney regularly provides certain legal services to a Rhode Island municipality including civil work and prosecutions on behalf of the local police department (the “Department”) in District Court. He or she currently represents a client in a probation violation matter in Superior Court, which matter was triggered by an arrest made by officers of the Department. The client had originally planned to accept a plea of nolo contendere to resolve the charges but has since decided to go to hearing on the matter.

The inquiring attorney asks whether he or she may represent the client at the probation violation hearing, at which relevant officers of the Department will be called as witnesses. He or she reports that although he or she “knows most of” the Department’s officers, he or she has had no contact with the officers involved in the client’s matter.

ISSUE PRESENTED

The inquiring attorney asks whether he or she is permitted under the Rules of Professional Conduct to represent the client at the hearing?

OPINION

It is the Panel’s opinion that the inquiring attorney is not permitted under the Rules of Professional Conduct to represent the client at the hearing.

REASONING

The facts as described by the inquiring attorney implicate Rule 1.7 of the Rules of Professional Conduct, 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].

Here, the inquiring attorney regularly conducts prosecutions on behalf of the Department in District Court. He or she now represents a client facing a probation violation charge in Superior Court, triggered by an arrest made by officers of the Department. This matter is moving toward a hearing at which relevant Department officers will be called as witnesses.

The Panel finds that these facts constitute a concurrent conflict of interest under two (2) separate provisions of Rule 1.7. First, pursuant to Rule 1.7(a)(1) this situation presents a directly adverse conflict of interest because the inquiring attorney will be required, as part of his or her representation of the client, to cross-examine Department officers at the hearing including possibly seeking to impeach their credibility. See Rule 1.7, Comment [6] (observing that “a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit”). In such a situation, the Department “is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer’s ability to represent the [Department] effectively” in the future, while the client “reasonably may fear that the lawyer will pursue that client’s case less effectively out of deference to the [Department]” Id. This is exactly the type of mutually-destructive dynamic Rule 1.7 is intended to avoid.¹ See Rhode Island Supreme Court Ethics Advisory Panel Op. 2024-05.

¹ That the inquiring attorney lacks personal knowledge of or connection with the Department officers who may testify is immaterial to this analysis. It is the inquiring attorney’s duty to cross examine which triggers the conflict of interest here, not the nature of his or her relationship with the officers.

Second, pursuant to Rule 1.7(a)(2) the inquiring attorney's representation of the client is also materially limited by his or her ongoing role as a prosecutor on behalf of the Department in several ways. For example, the inquiring attorney has a clear pecuniary interest in maintaining said prosecutorial role vis-à-vis the Department, which may be endangered by the necessarily adversarial requirements of diligently and zealously representing the client at the hearing. See Rule 1.7, Comment [8] (noting that "a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests"). Similarly, even absent the financial considerations the inquiring attorney has an interest in preserving good relations with the Department's officers in order to properly carry out his or her responsibilities as prosecutor which, again, may be undermined by his or her representation of the client at the hearing. In either case, the representation of the client at the hearing carries the substantial risk that the inquiring attorney's outside interests may "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." Id.; see also Rhode Island Supreme Court Ethics Advisory Opinion Op. 2025-08.

Normally, conflicts arising under Rules 1.7(a)(1) and (a)(2) may be overcome by the written informed consent of the affected client(s). See Rule 1.7(b)(4). However, in the instant case the Panel finds that the conflicts presented here are not consentable because there are no circumstances under which the inquiring attorney could provide competent and diligent representation to the client given his or her ongoing relationship with the Department. See Rule 1.7(b)(1); 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").

The instant matter is factually distinguishable from a similar inquiry the Panel addressed earlier this year in Advisory Opinion 2025-04. In that case, the inquiring attorney operated as a sole practitioner who occasionally employed unrelated attorneys as independent contractors. One such unrelated attorney served as an assistant town solicitor performing, among other work, prosecutions in the District Court on behalf of the town's police department. The inquiring attorney sought to represent a client in a District Court case brought by the town's police department. The Panel determined that although the situation presented apparent concurrent conflicts of interest pursuant to Rules 1.7(a)(1) and (a)(2), and that such conflicts were imputed to the inquiring attorney under Rule 1.10, several notable facts militated against finding the existence of a conflict there. First, the unrelated attorney neither read the case file nor participated in the matter in any way in his or her role as assistant solicitor for the town. Second, the inquiring attorney avoided scheduling the matter on any day when the unrelated attorney was serving as a prosecutor for the town. Third, the unusual structure of the inquiring attorney's practice model effectively served to screen the unrelated attorney off from any information about or fees generated from the representation.

Here, by contrast, no such militating factors exist. The inquiring attorney regularly conducts prosecutions on behalf of the Department. His or her representation of the client at the hearing would require him or her to cross-examine Department officers in an adversarial setting and otherwise generally advance every cognizable defense his or her client may have. Concurrently, however, his or her pecuniary and reputational interests in maintaining good relations with the Department cut directly against these duties owed to the client. That the case is to be heard in the Superior Court, not the District Court, and the inquiring attorney has had no

contact with the relevant Department officers here does not dilute the core conflicts at issue. For these reasons, the Panel finds that the inquiring attorney is not permitted to represent the client pursuant to Rule 1.7.