Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2026-09
Issued September 10, 2026

FACTS

The inquiring attorney currently represents a husband and wife (the "Clients") in a civil suit against a certain healthcare provider (the "Provider") pursuant to a contingency fee agreement. The Provider is represented by separate counsel (the "Counsel") retained by its insurer (the "Insurer") under a reservation of rights.

Recently, the Insurer filed a declaratory judgment action against the Provider, seeking a declaration that is has no obligation to provide the Provider with coverage in its defense of the Clients' underlying civil suit. The Clients are not parties to the declaratory judgment action.

The inquiring attorney reports that the Clients and the Provider wish for him or her to enter his or her appearance in the declaratory judgment action on behalf of the Provider, serving as co-counsel with the Counsel. The inquiring attorney would not charge the Provider any fee and would ensure all communications with the Provider occurred exclusively through the Counsel. The Clients and the Provider have already given their written informed consent to this arrangement.

ISSUE PRESENTED

The inquiring attorney asks whether it is permissible under the Rules of Professional Conduct for him or her to represent the Provider in the declaratory judgment action according to the terms described above?

OPINION

It is the Panel's opinion that the Rules of Professional Conduct do not permit the proposed representation.

REASONING

This inquiry concerns 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:
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> (1) the representation of one client will be directly adverse to another client; or
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> (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.
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> (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].

In this case, the inquiring attorney wishes to represent the Provider in a declaratory judgment action in which the Insurer seeks a declaration that it has no obligation to provide the Provider with coverage in its defense of the inquiring attorney's Clients' underlying civil suit. The Panel finds that this proposed arrangement triggers the prohibition against representation under Rule 1.7(a)(1) because the interests of the Provider and the Clients are undoubtedly directly adverse given the existence of ongoing litigation between them. See Rhode Island Supreme Court Ethics Advisory Panel Op. 2025-13; see also Rule 1.7, Comment [6]. The Panel further finds the proposed arrangement also triggers the prohibition in Rule 1.7(a)(2) because it carries the substantial risk that the inquiring attorney's representation of the Provider would be materially limited by the duties he or she owes to the Clients in numerous ways.[1] See Rule 1.7, Comment [8]

[1] For example, the fundamentally adverse nature of the Clients' and Provider's relationship would naturally cause one side "to feel betrayed," thus "impair[ing] the lawyer's ability to represent [that side] effectively" while the other side "reasonably may fear that the lawyer will pursue that [side]'s case less effectively out of deference to the [other side] . . . ." Rule 1.7, Comment [6]. This situation would likely be exacerbated by the disparity between the inquiring attorney's relative pecuniary interests in representing the Clients (who have a contingency fee agreement with the inquiring attorney) versus the Provider (who would pay no fee). See Rhode Island Supreme Court Ethics Advisory Panel Op. 2025-13. The arrangement also calls into question the inquiring attorney's ability to adequately and appropriately maintain both the attorney-client privilege and attorney-client confidentiality between and among the Clients and the Provider. See Rule 1.7, Comment

(observing 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”).

Normally, conflicts arising under Rules 1.7(a)(1) and (a)(2) may be overcome by satisfying the four (4) prongs of Rule 1.7(b). In this case, the proposed representation is not prohibited by law, satisfying Rule 1.7(b)(2), and the inquiring attorney has already secured the written informed consent of the Clients and the Provider pursuant to Rule 1.7(b)(4).

However, the Panel finds that the other two (2) prongs of Rule 1.7(b) cannot be met here. Rule 1.7(b)(1) cannot be met because there are no circumstances under which the inquiring attorney could provide competent and diligent representation to the Provider given his or her ongoing representation of the Clients. See Rhode Island Supreme Court Ethics Advisory Op. 2025-13; 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”). Rule 1.7(b)(3) similarly cannot be met because of the Clients’ and the Provider’s directly adverse relationship. See Rule 1.7, Comment [16] (observing that “[p]aragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client’s position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal”). Thus, the Panel concludes that the conflicts presented here are not consentable, such that the proposed representation is not permitted under the Rules of Professional Conduct. See Rule 1.7, Comment [13] (recognizing that “as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client’s consent”).

Given the clear prohibitions against the inquiring attorney’s proposed arrangement, the Panel urges the inquiring attorney to consider alternative approaches including, but not limited to, intervening in the declaratory judgment on behalf of the Clients.

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[29] (recognizing that “[w]ith regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach,” meaning that “if litigation eventuates between the clients, the privilege will not protect any such communications . . .”); Rule 1.7, Comment [30] (observing that “[a]s to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation”). Finally, the inquiring attorney’s proposal to communicate with the Provider exclusively through the Counsel does not comport with either the spirit of Rule 1.4 or its command to “inform” and “consult” with a client at all steps of a case. See Rule 1.4, Comment [1] (noting that “[r]easonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation”).