

Final

Rhode Island Supreme Court Ethics Advisory Panel Op. 2026-11 Issued October 8, 2026

FACTS

The inquiring attorney has represented a client since 2019 that operates as a real property wholesaler in Rhode Island (the “Business”). A recent legislative change requires real property wholesalers to obtain and maintain a real estate broker’s license to conduct business beginning January 1, 2027. This licensure process is overseen by the Department of Business Regulation and takes 2 years to fulfill. Consequently, the inquiring attorney reports, owners of real property wholesaler businesses currently lacking real estate broker’s licenses face an impending inability to operate and concomitant loss and/or closure of business unless and until they can complete the licensure process.

The Business’ current owner is one such individual lacking a real estate broker’s license. He or she has offered to transfer/sell the Business, including all goodwill, to the inquiring attorney¹ at no cost so long as the inquiring agrees to: (1) continue operating the Business as a real property wholesaler in Rhode Island; (2) engage the Business’ current staff and employees to continue under the current operational structure, with any such person involved in negotiating or signing a wholesale contract to become a licensed real estate broker; and (3) transfer ownership of the Business back to the current owner within 10 days of him or her becoming a licensed real estate broker. The purpose of this structure is to preserve the Business as an ongoing concern while its current owner navigates the 2-year real estate broker license process.

The inquiring attorney wishes to move forward with this proposed transaction. To this end, he or she has pledged that the transaction shall be fully described to the Business’ current owner in a fair and reasonable writing in a manner understood by him or her, the Business’ current owner shall obtain and consult outside counsel prior to effectuating the transaction, and the Business’ current owner shall provide written informed consent to the transaction and the roles of the parties. The inquiring attorney intends for his or her law firm to remain counsel to the Business given its familiarity with real estate law in general and the Business in particular.

ISSUE PRESENTED

The inquiring attorney asks whether the proposed sale/transfer of the Business to him or her comports with the Rules of Professional Conduct?

OPINION

It is the Panel’s opinion that the proposed sale/transfer of the Business to the inquiring attorney does comport with the Rules of Professional Conduct, subject to certain limitations.

¹ The inquiring attorney has applied for a real estate broker’s license and is exempt from the 2-year application period requirement.

REASONING

This inquiry implicates numerous Rules of Professional Conduct. Each shall be discussed below in turn.

Rule 1.8(a).

The propriety of the proposed transaction is governed by Rule 1.8(a) of the Rules of Professional Conduct:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Rule 1.8(a) is intended to ameliorate the risk that “[a] lawyer’s legal skill and training, together with the relationship of trust and confidence between lawyer and client, [may] create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client” Rule 1.8, Comment [1]. Thus, the requirements of Rule 1.8(a) generally apply to such transactions between lawyer and client as “lawyers engaged in the sale of goods or services related to the practice of law,” “lawyers purchasing property from estates they represent, “lawyer[s] accept[ing] an interest in the client’s business or other non-monetary property as payment of all or part of a fee,” “even when the transaction is not closely related to the subject matter of the representation” Id. By contrast, the requirements of Rule 1.8(a) generally do not apply in situations where “the lawyer has no advantage in dealing with the client,” such as “ordinary fee arrangements between client and lawyer” and “standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others” Id.

Here, the Panel finds the proposed transaction between the inquiring attorney and the Business falls within the ambit of Rule 1.8(a) because it concerns the sale/transfer of a going concern between a client and his or her longtime lawyer. See Rule 1.8, Comment [1]. The facts as described by the inquiring attorney satisfy the three (3) prongs of Rule 1.8(a). Rule 1.8(a)(1) is met because the terms of the proposed transaction are fair to both the current owner of the

Business—which will be able to continue operating until the current owner obtains a real estate broker’s license and retakes control—and the inquiring attorney—who will operate the Business pursuant to certain negotiated terms intended to promote continuity until the current owner completes his or her licensure requirements.² The terms themselves shall also be fully described to the Business’ current owner in writing in a manner understood by him or her. Rule 1.8(a)(2) is met because the Business’ current owner shall be represented by separate outside counsel. Finally, Rule 1.8(a)(3) is met because the Business’ current owner shall provide written informed consent to the transaction and the roles of the parties. See Rule 1.8, Comment [2].

Rules 5.7 and 1.7.

The Panel’s analysis does not end here, however, because the consummation of the proposed transaction carries additional ethical considerations for the inquiring attorney. 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].

² In reaching this conclusion as to Rule 1.8(a)(1), the Panel found significant two (2) facts. First, it appears the Business will seemingly fold absent the consummation of the proposed transaction. See Rule 1.8, Comment [2] (observing that in some situations, the existence or absence of “reasonably available alternatives” is a relevant factor in satisfying Rule 1.8(a)). Second, the Business’ current owner will be represented by separate outside counsel. See Rule 1.8, Comment [4] (similarly noting that “[t]he fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires”).

In this case, the inquiring attorney shall become the owner of the Business, which operates as a real estate wholesaler in this state. The Panel finds that the provision of real estate wholesaler services constitutes a law-related service under Rule 5.7(b) because such services necessarily involve significant contractual and other legal undertakings in general and have historically been a component of the inquiring attorney’s legal practice in particular. 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 therefore finds that pursuant to Rule 5.7(a)(1) the inquiring attorney will be subject to the Rules of Professional Conduct when providing real estate wholesaler services.³ 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.

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”). Of particular relevance 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

³ The fact that it is the inquiring attorney’s status as an active member of the Rhode Island Bar which permits him or her to obtain the real estate broker’s license needed to own/operate the Business without having to satisfy the new law’s 2-year application requirement—one of the lynchpins of the proposed transaction—only reinforces this point in the Panel’s view.

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 to provide legal services to his or her insurance customers).

Here, it is possible that aspects of the inquiring attorney’s representation of clients as an advocate in real estate matters, 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 and/or pecuniary interest in the Business. It is concomitantly possible that the Business’ provision of services could be affected by the inquiring attorney’s professional responsibilities in representing real estate clients. Such apparent conflicts are nonconsentable, even in the face of a client’s consent, written or otherwise, because it would be impossible for the inquiring attorney to provide competent and diligent representation to the client under either scenario. See Rhode Island Supreme Court Ethics Advisory Panel Ops. 2025-08 and 96-26. The Panel thus concludes that under Rule 5.7 the inquiring attorney cannot provide real estate wholesaler services through the Business in any matter in which he or she represents a client as an advocate, nor can he or she

represent a client as an advocate in any matter in which he or she provides real estate wholesaler services through the Business. See id.; see also Rhode Island Supreme Court Ethics Advisory Panel Ops. 99-08 and 96-29.

Rule 1.10.

Finally, the question of what role the inquiring attorney's law firm may play following the consummation of the proposed transaction remains outstanding. Its resolution is governed by Rule 1.10, pertaining to imputations of conflicts of interest:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Rule 1.10 operates "from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated." Rule

1.10, Comment [2]. This includes conflicts arising under Rule 1.7. See Rhode Island Supreme Court Ethics Advisory Panel Op. 99-09.

As the preceding analysis indicates, the inquiring attorney is prohibited under Rule 1.7(a)(2) from providing legal services to his or her real estate wholesaler clients and from providing real estate wholesaler services to his or her legal clients. The Panel finds this prohibition is imputed to the inquiring attorney's law firm pursuant to Rule 1.10(a). See Rhode Island Supreme Court Ethics Advisory Panel Op. 2025-07. The exception in Rule 1.10(a) does not apply because the lawyers in the inquiring attorney's law firm, organized as they are in a partnership, necessarily share the same disabling pecuniary interests as does the inquiring attorney. See Rule 1.10, Comment [3]. Therefore, the inquiring attorney's law firm may not represent the Business in its real estate wholesaler transactions nor provide legal services to the Business' real estate wholesaler clients. See Rhode Island Supreme Court Ethics Advisory Panel Op. 1998-08. With that said, to the extent the Business requires legal services outside the normal scope of its business activities—such as, for example, legal defense services if sued by a third party—the prohibition does not apply.