

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2017-04
Issued August 10, 2017**

FACTS

The inquiring attorney represents a former employee of a city in pending lawsuits against the city. Pursuant to an amendment to the city charter that authorizes the city council to retain its own legal counsel, the inquiring attorney was recently confirmed as the council's legal counsel. The inquiring attorney explains that the scope of his/her representation of the city council is limited to providing legal advice to the council where there is a question or disagreement with an opinion of the solicitor, or in cases where the council and the mayor's office disagree. He/she states that settlement of claims against the city is outside the scope of his/her representation of the council. He/she further states that claims under the jurisdiction of the council are heard by the council's claims committee that, with the advice of the solicitor, makes recommendations to the full council.

ISSUE PRESENTED

The inquiring attorney, who represents a client in pending litigation against the city, asks whether he/she would have a conflict of interest if he/she serves as legal counsel to the city council under this arrangement.

OPINION

The inquiring attorney's representation of the city council would constitute a conflict of interest under Rule 1.7. The inquiring attorney may serve as legal counsel to the city council, however, provided that all the requirements of Rule 1.7(b) are satisfied, including obtaining the informed consent, confirmed in writing, of the city council and of the former city employee.

REASONING

The facts of this inquiry are governed by Rule 1.7 of the Rules of Professional Conduct.

The Rule states:

Rule 1.7. Conflict of interest: Current clients. (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.

The Panel has previously advised that it is a conflict of interest under Rule 1.7 to represent a municipality and to represent clients whose interests are adverse to the municipality. In Ethics Advisory Panel Opinion 2007-03 (2007), the Panel concluded that it was a conflict of interest under Rule 1.7 for an attorney who represented a municipality in two lawsuits to also represent private clients in matters before the municipality's zoning board of review and its council. In Ethics Advisory Panel Opinion 2003-06 (2003) the Panel similarly concluded that an attorney's proposed representation of a municipality in a lawsuit constituted a conflict of interest under Rule 1.7 where the attorney also represented clients in matters before the municipality's planning and zoning boards. In both Ethics Advisory Panel Opinion 2007-03 and Ethics Advisory Panel Opinion 2003-06, the Panel advised that the inquiring attorneys could not take on the proposed representations, absent client consent.

The Commentary to Rule 1.7 explains:

Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.

In the instant inquiry, the inquiring attorney represents a former city employee whose interests are directly adverse to the city in pending litigation. Therefore, to undertake the representation of the city council constitutes a conflict of interests for the inquiring attorney pursuant to Rule 1.7. This is so even though the pending litigation and the matters relating to the inquiring attorney's representation of the city council are unrelated. Compare Rule 1.9 "Duties to former client" (conflict of interest to represent client whose interests are materially adverse to interests of former client only if matters are the same or substantially related.)

Notwithstanding the existence of a conflict of interests under these facts, the Panel believes that the conflict is waivable. The inquiring attorney's representation of the city council is extremely limited to providing legal advice to the council in instances where the council disagrees with an opinion of the solicitor, or where the council and the mayor's office disagree. In all other matters, including settlement of claims against the city, the council is represented by the city's law department. The Panel concludes that while a conflict of interest exists under these facts, the inquiring attorney may undertake the representation of the council provided he/she reasonably believes he/she can provide competent and diligent representation to the council and to the former city employee, and that all other requirements of rule 1.7(b) are satisfied, including informed consent, confirmed in writing, of the city council and of the former city employee.

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under the State Ethics Code or any other rules, regulations or laws that may have bearing on the issues raised by this inquiry.