

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2017-05 Request #1054
Issued November 9, 2017**

FACTS

The inquiring attorney represented individuals in the formation of a real estate investment company (hereinafter, Company A). Company A has located a potential real estate deal in which it would be a minority investor in Company B. Company B is developing a parcel of property located in Massachusetts (hereinafter, the Development). The inquiring attorney proposes to represent Company A who would be investing with others in the Development.

Company B is an affiliate of real estate developer Company C. Company C is a client of the inquiring attorney's former law firm. While he/she was an associate at the law firm, the inquiring attorney worked with other lawyers in the firm on several of Company C's real estate developments. The inquiring attorney states that given the lapse of time, any confidential information he/she may have acquired in the representation of Company C is likely stale. The legal services that the inquiring attorney provided to Company C were unrelated to the Development.

ISSUE PRESENTED

The inquiring attorney asks whether he/she has a conflict of interest in the representation of Company A in a transaction with Company B which is an affiliate of a former client, Company C, and whether consent is required.

OPINION

The inquiring attorney may undertake the representation of Company A in a real estate investment transaction with Company B, an affiliate of his/her former client Company C, without the consent of Company C. The inquiring attorney must abide by Rule 1.9(c) regarding information relating to the former representation.

REASONING

The Rule of Professional Conduct that informs this inquiry is Rule 1.9 entitled "Duties to Former Client". The rule states as follows:

Rule 1.9. Rule 1.9. Duties to former client.

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

- (1) whose interests are materially adverse to that person; and
- (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
- (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client

The inquiring attorney seeks to represent Company A in a real estate investment transaction with an affiliate of a client of the inquiring attorney's former law firm. While he/she was an associate of the former law firm, the inquiring attorney provided legal services to Company C. In doing so, he/she presumably acquired confidential information about Company C regardless of his/her ability to recall any of it now. Paragraphs (b) and (c) of Rule 1.9 apply.

Company B is an affiliate of Company C. Whether an attorney may undertake a representation that is adverse to an affiliate of a former corporate client depends upon the extent to which the affiliated entities share operations and interests. See ABA Annotated Model Rules of Professional Conduct, at 179 (8th ed. 2015). The instant inquiry contains no facts relating to the degree of commonality between Company B and Company C.

Even assuming a substantial sharing of operations and interests between Company B and Company C, the Panel notes that the Development is not the same development, or substantially related to the developments or other matters in which the inquiring attorney represented Company C. Therefore, there is no conflict of interest under the facts of this inquiry.

The Panel concludes that the inquiring attorney may undertake the representation of Company A in a real estate investment transaction with Company B, which is an affiliate of his/her former client Company C, without the consent of Company C. The inquiring attorney must abide by Rule 1.9(c) regarding information relating to the former representation.