

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2017-06
Issued December 11, 2017**

FACTS

The inquiring attorney is employed as staff counsel at a nonprofit corporation (Company A) which he/she currently represents in several matters against a for-profit company (Company B). The inquiring attorney recently began pursuing an employment opportunity with another non-profit corporation (Company C). During discussions with Company C, the inquiring attorney learned that Company B's parent company is a dues-paying member of Company C. Company C's membership includes individuals, nonprofit corporations, and for-profit corporations. The inquiring attorney states that members of Company C have no governance rights within the organization, and its articles of incorporation and by-laws provide no role whatsoever for its members. He/she states that Company C is autonomous. It regularly takes positions adverse to positions of its members, and has publicly opposed certain actions and positions taken by Company B's parent company. The inquiring attorney further states that individuals and corporations join Company C because they find the company's advocacy to be valuable. The inquiring attorney asks whether he/she has a conflict of interest under Rule 1.7 of the Rules of Professional Conduct

ISSUE PRESENTED

The inquiring attorney asks whether he/she has a conflict of interest in representing Company A against Company B while he/she is pursuing an employment opportunity with Company C.

OPINION

It is not a conflict of interest under Rule 1.7 for the inquiring attorney to pursue employment with Company C during his/her representation of Company A in litigation against Company B whose parent company is a member of Company C.

REASONING

Rule 1.7 entitled "Conflicts of interest. Current clients" is applicable to this inquiry. 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 discussion of personal interest conflicts in Comment [10] to Rule 1.7 is instructive. In pertinent part, the comment states as follows:

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, ...when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client.

The Panel examines whether the facts of this inquiry present a conflict of interest under Rule 1.7(a)(2), that is, whether there is a significant risk that the inquiring attorney's representation of Company A in litigation against Company B will be materially limited by his/her personal interest in pursuing employment with Company C. Company B's parent company is a member of Company C. In examining the relationship between Company C and Company B's parent company, the Panel notes that Company C's articles of incorporation and its by-laws provide no role for its members. Company C is autonomous and in fact, has taken actions and advocacy positions against the interests of Company B's parent company. The parent company has no governance authority within Company C. In short, Company B's parent company appears to be merely a dues-paying member of Company C's organization with no involvement in the operations of Company C. Under these facts, the Panel does not believe that the inquiring attorney's interest in pursuing employment with Company C presents a significant risk that his/her representation of Company A will be materially limited.

The Panel concludes that it is not a conflict of interest under Rule 1.7(a)(2) for the inquiring attorney to pursue employment with Company C during his/her representation of Company A in litigation against Company B whose parent company is a member of Company C.