

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Opinion No. 2002-02 Request No. 842
January 10, 2002**

Facts:

The inquiring attorneys have been solicitors for a municipality for several years. The inquiring attorneys have submitted bills for their legal services according to a procedure approved by the municipality's council (Council) some years ago. In accordance with that procedure the inquiring attorneys submitted an aggregate bill containing total fees and expenses for the pertinent period. Submitted with the aggregate bill was a supporting itemized statement that described each legal service rendered, and which identified the matter to which it related, the date the service was rendered, and the time spent. Pursuant to the procedure, after the Council reviewed the documents, the itemized statement was returned to the solicitors' private law offices, was considered confidential information, and was not made available to the public. The aggregate bill was maintained at the town/city hall as a publicly accessible record.

The present Council recently voted to change the billing procedure which now requires the inquiring attorneys to list categories of services, (e.g., "miscellaneous conferences," "town issues," "department X"), the total hours for each category, and the sum of all the hours, fees and expenses. Under the new procedure, the inquiring attorneys' bills are maintained at the town/city hall and are available to the public. With respect to prior bills, the Council voted and directed that the inquiring attorneys prepare and submit redacted versions of the prior itemized statements. The Council will review and then forward the redacted versions to the town/city hall as publicly accessible records. The Council also directed that the unredacted itemized statements remain at the attorneys' law offices as confidential information. An individual member of the Council has requested that the inquiring attorneys provide him/her with the prior unredacted itemized statements for his/her review.

Issue Presented:

The inquiring attorneys ask what their obligations are under the Rules of Professional Conduct to the past and present Councils, and to the individual member of the Council.

Opinion:

Pursuant to Rule 1.13(a) the inquiring attorneys' client is the municipality, acting through its Council. The attorneys must comply with the Council's direction that they submit to the Council redacted itemized statements of prior bills, and that they maintain the unredacted statements at their law offices as confidential information. Whether the individual council member has a right to view the prior unredacted statements is a question of substantive law, which if disputed is a matter for judicial determination. The Panel further advises that the inquiring attorneys have no ethical obligation under the Rules of Professional Conduct to provide the individual council member with the unredacted itemized statements, and that to do so would violate Rule 1.13, Rule 1.2 and Rule 1.6, unless the Council consents.

Reasoning:

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. Whether the individual council member has a right to view the prior unredacted statements is a question of substantive law, which if disputed is a matter for judicial determination. The Panel therefore declines to render an opinion on that question, and limits this advisory opinion to the inquiring attorneys' ethical obligations under the Rules of Professional Conduct.

Rule 1.13(a) and (d) state:

(a) A lawyer employed or retained by an organization represents the organization acting through its duty authorized constituents.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

The duties defined in Rule 1.13 apply to government organizations. See Commentary to Rule 1.13. In the instant inquiry, the inquiring attorneys' client is the municipality acting through its duly authorized Council. The inquiring attorneys do not represent individual council members. See R.I. Sup.Ct. Ethics Advisory Panel Op. 92-41 (1992); Commentary to Rule 1.13. Additionally, the inquiring attorneys do not have ethical obligations to the past Council that are separate from their ethical obligations to

the present Council. Their obligations under the Rules are to the municipality through its Council.

The Council has directed the inquiring attorneys to submit redacted itemized statements, and to maintain the unredacted statements at their law offices as confidential information. Pursuant to Rule 1.2(a) which requires that “[a] lawyer abide by a client’s decisions concerning the objectives of representation ... and shall consult with the client as to the means by which they are to be pursued,” the inquiring attorneys must comply.

The inquiring attorneys have no ethical obligation, however, to provide the individual Council member with prior unredacted itemized statements, unless the municipality, through the Council, consents. In Ethics Advisory Panel Opinion 99-17 (1999), this Panel stated that a lawyer’s billing statement is information relating to the representation of a client, and is therefore protected by Rule 1.6. Rule 1.6, entitled “Confidentiality of Information,” provides that a lawyer shall not reveal information relating to the representation of a client without the client’s consent. To comply with the individual council member’s request for the unredacted statements without the Council’s consent would conflict with the inquiring attorneys’ responsibilities to the municipality, through the Council majority, under Rule 1.13, Rule 1.2 and Rule 1.6. See Michigan State Bar Comm. on Prof. and Judicial Ethics Op. RI-254 (1996) (city attorney who has been directed by city council to draft ordinance banning in-line skating on sidewalks may not comply with dissenting member’s request to draft opinion on constitutionality and enforceability of the proposed ordinance.)

The Panel concludes that the municipality, acting through its Council, is the inquiring attorneys’ client. Accordingly, the Panel advises the attorneys to comply with the Council’s direction that they submit to the Council redacted itemized statements of prior bills, and that they maintain the unredacted statements at their law offices as confidential information. The Panel further advises that the inquiring attorneys have no ethical obligation under the Rules of Professional Conduct to provide the individual council member with the unredacted itemized statements, and that to do so would violate Rule 1.13, Rule 1.2 and Rule 1.6, unless the Council consents.