

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2002-03A Request No. 845
Issued April 11, 2002

Facts:

The inquiring attorney is a solicitor for a municipality and as such, serves as legal advisor to the municipality's planning and zoning boards. The planning board approved an application for a commercial development. A group of property owners who are neighbors to the proposed development has filed an appeal before the zoning board from the decision of the planning board. The inquiring attorney previously represented one of the property owners when he/she purchased his/her property.

Issue Presented:

The inquiring attorney asks whether he/she has a conflict of interest in representing the interests of the municipality in the appeal.

Opinion:

The mere proximity of the real estate which was the subject of the inquiring attorney's prior representation to the proposed development does not satisfy the same-or-substantially-related requirement in Rule 1.9, or the personal-and-substantial-participation requirement in Rule 1.11. The inquiring attorney's representation of the municipality in the appeal before the zoning board does not present a conflict of interest pursuant to Rule 1.9 provided that the two matters are not otherwise substantially related. The inquiring attorney's representation of the municipality does not present a conflict of interest pursuant to Rule 1.11 provided that the inquiring attorney did not participate personally and substantially in the subject matter of the appeal during the prior representation.

Reasoning:

Rule 1.11(d)(1) applies to this inquiry. It states:

(d) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law

no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter;

Also applicable to this inquiry is Rule 1.9 which states:

Rule 1.9. Conflict of Interest: Former Client. - A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) 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 consents after consultation; or
- (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

The subject of the inquiring attorney's prior representation was the purchase of real estate by his/her former clients. Aside from the fact that real estate which was the subject of the prior representation is in proximity to the proposed development, the Panel is unable to determine from the information provided by the inquiring attorney what actual connection exists, if any, between the prior and the proposed representations.

The Panel is of the opinion that the mere proximity of the former client's real estate to the proposed development does not, by itself, satisfy the "same or substantially related" requirement in Rule 1.9, or the personal-and-substantial-participation requirement in Rule 1.11. The Panel concludes that (1) the inquiring attorney's representation of the municipality in the appeal before the zoning board does not present a conflict of interest pursuant to Rule 1.9 provided that the two matters are not otherwise substantially related; and (2) the inquiring attorney's representation of the municipality does not present a conflict of interest pursuant to Rule 1.11 provided that the inquiring attorney did not participate personally and substantially in the subject matter of the appeal during the prior representation.

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 presented by this inquiry.