

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2002-05 Request No. 852
Issued June 6, 2002

Facts

The inquiring attorney represents the seller in pending litigation relating to the purchase and sale of a business. In dispute is a letter agreement entered into by the parties at the closing. The letter agreement provided that certain sums of money out of the sale proceeds be held in escrow and applied to the costs of repairs or work required to obtain a license from a state agency. Another lawyer in the inquiring attorney's law firm represented the seller at the closing; a lawyer in the opposing counsel's law firm represented the buyer at the closing. The two lawyers involved in the closing will testify at the trial regarding the intent and meaning of the letter agreement.

Issue Presented

The inquiring attorney asks whether he/she may continue to act as attorney for the seller in the pending litigation.

Opinion

Pursuant to Rule 3.7, the inquiring attorney may continue to act as attorney in the pending litigation provided that the testimony of the other lawyer in his/her law firm is not adverse to the firm's client.

Reasoning

Rule 3.7 is pertinent to this inquiry. It states:

Rule 3.7. Lawyer as Witness. -

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

- (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

The Panel concludes that pursuant to Rule 3.7(b), the inquiring attorney may continue to act as the attorney of the seller in the pending litigation, provided that the testimony of the other attorney in his/her law firm is not adverse to the law firm's client. The Panel further concludes that "if there is likely to be a substantial conflict between the testimony of the client and that of . . . a member of the lawyer's firm, the representation is improper." Commentary to Rule 3.7. In the latter instance, the conflict of interest provisions of Rule 1.7 would preclude the representation, and Rule 1.10 entitled "Imputed Disqualification" would disqualify the firm.