

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2002-07 Request No. 855
Issued November 14, 2002

Facts:

The inquiring attorneys are co-counsel for several plaintiffs in multiple lawsuits arising out of the same facts. The cases have been consolidated for trial. The attorneys' clients are representatives of the estates of several decedents and a survivor of the incident which is the subject of the lawsuits. The inquiring attorneys state that the representatives of the decedents' estates have revealed certain material facts that contradict the survivor's account of the facts. The attorneys further state that the testimony of the survivor could defeat the cause of action of the representatives, and that the testimony of witnesses for the representatives could likewise defeat the cause of action of the survivor.

Issue Presented:

The inquiring attorneys ask whether there is a conflict of interest in their simultaneous representation of the survivor and of the representatives of decedents' estates.

Opinion:

There is a conflict of interest pursuant to Rule 1.7(b).

Reasoning:

Rule 1.7(b) states:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and

- (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The Commentary to Rule 1.7 is instructive. It provides:

“An impermissible conflict may exist by reason of substantial discrepancy in the parties’ testimony, incompatibility in positions in relation to an opposing party to the fact that there are substantially different possibilities of settlement of the claims or liabilities in question.”

The Panel concludes that if the positions of the representatives of the decedents’ estates and the survivor are diametrically opposed, then a conflict of interests exists pursuant to Rule 1.7(b).

