

Final

Rhode Island Supreme Court
Ethics Advisory Panel Opinion No. 2003-01 Request No. 857
Issued March 4, 2003

Facts:

The inquiring attorney is a town solicitor for the town in which he/she lives. He/she seeks to represent neighbors in a civil action against the families of two juveniles who allegedly caused the neighbor's home to be destroyed by fire. The solicitor's office prosecutes misdemeanor cases in the district court, and occasionally prosecutes or assists in the prosecution of juveniles in the family court. The inquiring attorney notified the town's police department that because the case involves his/her friends and neighbors, the solicitor's office would not represent the town in the prosecution of the two juveniles. The inquiring attorney states that the solicitor's office has had no involvement with the town's prosecution of the juveniles.

Issue Presented:

The inquiring attorney asks whether he/she may represent the private individuals.

Opinion:

The inquiring attorney, who is a town solicitor, may represent individuals in a civil action against the families of two juveniles whom the town is prosecuting if the solicitor's office does not represent the town in the prosecution of the juveniles, and if in accordance with Rule 1.7, both the town and the individuals consent after consultation and disclosure of all potential conflicts.

Reasoning:

Both Rule 1.11(a) and Rule 1.7 apply to this inquiry. Rule 1.11(a) states as follows:

Rule 1.11. Successive government and private employment.

- (a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public officer or employee. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
 - (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

- (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

Although Rule 1.11 is entitled “Successive government and private employment,” the Panel believes it is equally applicable to concurrent government and private employment. See R.I. Supreme Court Ethics Advisory Opinion 96-13 (1996). The inquiring attorney has represented to the Panel that he/she has had no involvement in the case, and that the solicitor’s office has declined to represent the town in the prosecution of the juveniles. Therefore, Rule 1.11(a) does not present an impediment to the inquiring attorney’s proposed representation.

However, the Panel is of the opinion that a potential conflict of interest exists pursuant to Rule 1.7.

Rule 1.7 states:

Rule 1.7. Conflict of interest: General rule. (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

(b) 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 town, through its firefighters and other employees, was a participant in the subject matter of the civil lawsuit. Facts could surface which could give rise to a claim by the neighbors against the town. In that instance, the inquiring attorney’s representation of the neighbors would be directly adverse to the interest of the town, thus presenting a conflict of interest under Rule 1.7(a). It is likely, too, that the town will be called upon to provide documents and testimony in the civil matter. Before complying, the town would likely seek the advice of its solicitor, the inquiring attorney. The Panel believes that in that instance, the representation of the neighbors may be materially

limited by the inquiring attorney's responsibilities to the town, and vice-versa. See Rule 1.7(b).

The Panel concludes that while the facts of this inquiry suggest a conflict of interest under Rule 1.7, the inquiring attorney may undertake the representation of the private clients if (a) he/she reasonably believes that neither representation will be adversely affected, and (b) both the town and the private clients consent after consultation and disclosure of all potential conflicts.

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 issue raised by this inquiry.