

Final

Rhode Island Supreme Court Ethics Advisory Panel  
Opinion No. 2004-03 Request No. 877  
Issued March 5, 2004

FACTS:

The inquiring attorney's law partner is married to the deputy chief of police in a municipality. The deputy chief is also one of the prosecuting officers for the municipality. The law firm has established the following policy with respect to representing individuals who are charged with crimes by the municipality's police department.

The law partner who is married to the deputy chief does not handle any criminal matters relating to the municipality. The law firm declines the representation if the law partner's spouse is involved in the investigation. If the law partner's spouse has no involvement in a criminal investigation, the inquiring attorney will take on the representation after disclosing the relationship to the prospective client.

ISSUES PRESENTED:

The inquiring attorney asks whether the policy complies with the Rules of Professional Conduct.

OPINION:

The law firm's policy complies with the conflicts provisions of the Rules provided that whenever the inquiring attorney takes on the representation of an individual charged with a crime by the municipality's police department, the conditions for waiver pursuant to Rule 1.7(b) are satisfied, i.e. the inquiring attorney and the law partner reasonably believe that the representation will not be adversely affected, and the client consents after consultation.

REASONING:

The conflicts provisions of Rule 1.7(b) are pertinent to this inquiry. Rule 1.7(b) states:

- (b) 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 law firm's policy of declining the representation of a criminal defendant if the law partner's spouse is involved in the investigation is a sound policy. As an investigating officer the deputy chief will likely be a witness, and as such potentially, though not invariably, presents a conflict of interest for the lawyers in the firm pursuant to Rule 1.7(b). That is, the representation of the person charged could be materially limited because of the relationship between the law partner and the deputy chief.

The Panel next considers the situation where the law partner's spouse is not involved in a criminal investigation by the municipality's police department, in which case the inquiring attorney, but not the law partner, takes on the representation after disclosure. Similar to the preceding scenario, though to a lesser extent, the relationship potentially limits the representation, thus presenting a conflict of interest under Rule 1.7(b). The law firm's policy falls short in one aspect, namely, before taking on the representation of criminal defendant in this situation, the inquiring attorney and his/her law partner must satisfy the conditions of waiver set forth in Rule 1.7(b). If the inquiring attorney and his/her law partner reasonably believe that the representation would not be adversely affected by the relationship *and* the client consents after consultation, the conflict is waived and the representation is permissible. See Rule 1.7(b).

Finally, the Panel believes that the inquiring attorney's representation of criminal defendants in cases where the law partner's spouse serves as the prosecuting officer before the court is proper. A prosecuting officer's role is typically limited to the arraignment stage of the proceedings and as such does not present a material limitation on the representation of a defendant by the inquiring attorney.

In summary, the Panel concludes that the law firm's policy complies with the conflicts provisions of Rule 1.7(b) provided the conditions for waiver under Rule 1.7(b) are satisfied, namely, that the inquiring attorney and the law partner reasonably believe that the representation will not be adversely affected, and the client consents after consultation.

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.