

Final

**Rhode Island Supreme Court Ethics Advisory Panel  
Opinion No. 2005-02 Request No. 893  
Issued February 24, 2005**

FACTS

The inquiring attorney is a solicitor for a municipality. The municipality is in the process of considering alternative sites for a municipal facility. One of the sites, Lot X, is a lot that is adjacent to the municipality's closed landfill. Several residents in the area of Lot X have organized a citizens group to resist the use of Lot X for the facility. To that end the group has hired attorneys to represent it.

Two members of the citizens group are owners of lots across from the closed landfill. Some five years ago, and before the inquiring attorney became the solicitor, they consulted with the inquiring attorney to discuss their concerns about the municipality's plan to permanently close the landfill, and about monitoring of groundwater in the area of the landfill thereafter. The inquiring attorney states that he/she does not recall discussing Lot X with the two individuals. He/she also states that although there was a consultation with the individuals, he/she did not thereafter take on the representation. One of the individuals recently suggested to the inquiring attorney that he/she could not serve as solicitor on matters relating to the placement of the facility on Lot X because of the prior consultation.

ISSUE PRESENTED

The inquiring attorney asks whether he/she has a conflict of interest in representing the municipality as solicitor in this matter.

OPINION

The matters are not "the same or substantially related" and the inquiring attorney does not have a conflict of interest in representing the municipality in the current controversy.

REASONING

Even though the inquiring attorney did not represent the individuals beyond the initial consultation, the Rules of Professional Conduct pertaining to confidentiality and

conflicts of interest attach. Rule 1.9 relating to conflicts of interest with former clients states:

**Rule 1.9. Conflict of Interest: Former Client.** - A lawyer 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.

According to the inquiring attorney, the subject matter of the consultation with the two individuals was limited to discussions about the municipality's plan to permanently close the landfill, and groundwater problems in the area of the landfill. The subject of the current controversy is the use of Lot X which is adjacent to the now closed landfill for a municipal facility. As owners of real estate in the area the two individuals who consulted with the inquiring attorney would have an interest in both controversies. Still in all, the subject matter of the current controversy i.e. placing a facility on Lot X, is not the same or substantially related to the subject matter of the previous controversy which was the closing of the landfill and monitoring of groundwater in the area. Therefore, the inquiring attorney does not have a conflict of interest in representing the municipality in the current search for a site for the proposed facility and controversies surrounding it.

The inquiring attorney has an obligation of confidentiality to the two individuals pursuant to Rule 1.6. See Rhode Island Ethics Advisory Panel Op. 95-26 (facts that client did not pay fee and attorney did not commence work after initial consultation do not negate attorney-client relationship.) Under Rule 1.9(b), the inquiring attorney may not use confidential information he/she may have learned during the consultation with the two individuals to their disadvantage.

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.