

**Rhode Island Supreme Court Ethics Advisory Panel**  
**Opinion No. 2005-08 Request No. 902**  
**Issued September 22, 2005**

Facts:

The inquiring attorney drafted a will and a trust on behalf of an individual, now deceased. The inquiring attorney has represented X as trustee of the trust. The trust directs that upon the death of the settler, X be joined by another individual trustee, Y, to continue the trust as a private charitable foundation. Both X and Y have requested that the inquiring attorney continue as the attorney for the charitable foundation. The inquiring attorney states that he/she is unaware of any specific disagreement between the individual trustees.

Over the years, the inquiring attorney has represented Y, a longtime friend and clergyman, on various personal matters unrelated to Y's duties as trustee, and as the holder of the decedent's health care power of attorney. The inquiring attorney is a member of Congregation Z, which employs Y as a clergyman, and which may be a significant beneficiary of the trust

The inquiring attorney proposes to send engagement letters to X and Y in which he/she will include disclosures such that he/she has acted at various times as attorney for the decedent, for the trust, for X as trustee, and for Y both on personal matters unrelated to the trust, and as holder of decedent's health care power of attorney. The inquiring attorney proposes to advise them that he regards the trust as his primary client and that X and Y as trustees are his clients, but only with regard to trust and foundation matters. He/she would advise X and Y that should any dispute arise between X and Y, or should any conduct by them be inimical to the trust, the inquiring attorney will only act on behalf of the trust, and that he/she will request that they obtain independent counsel. He/she will also advise X and Y that if a controversy relating to the trust should arise between X and Y, they should refrain from disclosing to him/her any information relative thereto which they regard as confidential and therefore subject to the attorney-client privilege, because he/she does not represent them individually. Lastly, the inquiring attorney will disclose that he is a member of Congregation Z and a life trustee of Z's board, and that he/she will recuse from all board business relating to Y's contract with Congregation Z, and relating to all board business to the trust and foundation.

Issue Presented:

The inquiring attorney asks whether he/she has a conflict of interest in the representation of Y, and whether his/her letter to X and Y would comply with the Rules of Professional Conduct.

Opinion:

The inquiring attorney does not have a conflict of interest under Rule 1.9 in the representation of Y as co-trustee with X, as the trust and foundation matters are not substantially related to the inquiring attorney's prior representations of Y. The disclosures proposed by the inquiring attorney in his/her engagement letters to X and Y satisfy the ethical precepts of the Rules of Professional Conduct.

Reasoning:

Rule 1.9 states as follows:

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

The inquiring attorney's past representations of Y, including the representation relating to the health care power of attorney for the decedent, are not substantially related to matters of the trust and the charitable foundation. Therefore, the inquiring attorney may represent X and Y as co-trustees of the trust and the foundation. The inquiring attorney's representation of the decedent and the trust, and his/her affiliation with Congregation Z do not appear to present a conflict of interest under these facts.

Turning now to the inquiring attorney's proposed letters to X and Y, the Panel notes that throughout the Rules of Professional Conduct, lawyers are urged, even required, to make similar disclosure to clients under various circumstances. For example, paragraph (2) of Rule 1.7 entitled "Conflict of interest: General rule," provides that "[w]hen 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.” Elsewhere, Rule 1.13 and its commentary require lawyers who represent entities to clarify the lawyer’s role when it is apparent that an entity’s interests are adverse to those of the constituents with whom the lawyer is dealing. See Rule 1.13(d).

The inquiring attorney has chosen to make disclosures regarding his/her prior representations and affiliations, and to clarify his/her role, as well as the limits of the attorney-client relationship and the attorney-client privilege, at the outset of the proposed representation. The Panel concludes that the inquiring attorney’s proposal satisfies the precepts of the Rules of Professional Conduct.