

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2005-10 Requests No. 905 and No. 906
Issued November 10, 2005**

Facts

Two inquiring attorneys provided legal services to Corporation A relative to permits necessary for the development of real estate owned by the corporation. One inquiring attorney provided legal services relating to municipal permits; the other provided legal services relating to state environmental permits. Corporation A was then sold to a newly created corporation, Corporation B, which consisted of the same four principals and shareholders as Corporation A. The inquiring attorneys then also provided legal services to Corporation B relative to the permits for the original development project which Corporation B took over, but eventually abandoned because of financial reasons.

Subsequently, Corporation B conveyed its tangible and intangible assets to Corporation C, an existing entity. The principals and shareholders of Corporation C are different from those of Corporation B. Corporation C wishes to proceed with the original development project, and has asked the inquiring attorneys to represent it relative to the necessary state and municipal permits.

Meanwhile, however, two of the principals/shareholders of Corporation B, disgruntled by the decision to sell Corporation B's assets, have raised objections to the sale to Corporation C, and will likely pursue litigation in an attempt to void the sale. The real estate being developed which was the primary asset of Corporation B, was conveyed from Corporation B to Corporation C by warranty deed. The deed was signed by an authorized representative of Corporation B. The two disgruntled individuals have voiced opposition to the representation of Corporation C by the inquiring attorneys.

Issue Presented

The inquiring attorneys ask whether it would be a conflict of interest to represent Corporation C in obtaining permits for the real estate development project.

Opinion

The interests of Corporation C are not adverse to those of the former client, Corporation B, and therefore there is no conflict of interest pursuant to Rule 1.9. The inquiring attorneys may represent Corporation C in obtaining permits for the real estate development project.

Reasoning

Two Rules of Professional Conduct apply to this inquiry: Rule 1.9 entitled "Conflict of interest: Former client," and Rule 1.13 entitled "Organization as client." Rule 1.9 states:

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.

In the instant inquiry the proposed representation of Corporation C relating to permits for the real estate development project is “the same or a substantially related matter” in which the inquiring attorneys represented Corporations A and B. However, in the dispute that has arisen about the sale of Corporation B’s assets, the interests of Corporation B are not adverse to those of Corporation C. Rather, the adversity in this dispute runs between two dissenting constituents of Corporation B and the remaining two constituents, and also between the two individual dissenters and Corporation C.

Rule 1.13 is instructive. In pertinent part it states:

Rule 1.13. Organization as Client. –

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. (Emphasis added.)

The attorney-client relationships in the former representations ran between the inquiring attorneys respectively and Corporation B. There existed no attorney-client relationship between the inquiring attorneys and the individual constituents of Corporation B.

The Panel concludes that, insofar as the interests of Corporation C are not adverse to those of the inquiring attorneys’ former client Corporation B, there is no conflict of interest pursuant to Rule 1.9. The Panel advises that the inquiring attorneys may represent Corporation C relative to permits for the real estate development project.

