

Final

Rhode Island Supreme Court Ethics Advisory Panel  
Opinion No. 2007-03 Request No. 927  
Issued February 8, 2007

Facts

The inquiring attorney has been retained as special counsel for a municipality in two separate lawsuits in which the inquiring attorney, as co-counsel with either the municipality's solicitor or its assistant solicitor, represents the municipality. The inquiring attorney seeks to represent private law clients in matters before the municipality's zoning board of review and its town council.

Issue Presented

The inquiring attorney, who represents the municipality as special counsel with the municipality's solicitors, asks whether he/she would have a conflict of interest if he/she represented private clients before the municipality's zoning board of review or its town council.

Opinion

The representation of private clients before a municipality's zoning board of review or its town council by an attorney who represents the municipality as special counsel constitutes a conflict of interest pursuant to Rule 1.7. The inquiring attorney may not represent private clients before the zoning board of review or before the town council unless he/she obtains the consent after consultation of the private clients and the municipality.

Reasoning

Rule 1.7 of the Rules of professional Conduct is pertinent to this inquiry. The Rule states:

- (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) 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 inquiring attorney has a client-lawyer relationship with the municipality. Thus, under Rule 1.7, the inquiring attorney may not represent clients with interest adverse to the municipality without client consent. In Ethics Advisory Panel Op. 90-36 (1990), the Panel concluded that a party to a city's zoning board action occupies a position adverse to the city, and therefore a part-time solicitor could not represent private clients before the city's zoning board. In Ethics Advisory Op. 2003-06 (2003) the Panel similarly concluded that an attorney's representation of a municipality in a pending lawsuit would constitute a conflict of interest under Rule 1.7 where the attorney also represented clients in matters before the municipality's zoning and planning boards.

In the instant inquiry, the Panel concludes that the inquiring attorney's representation of private clients before the municipality's zoning board or before its town council would constitute a conflict of interest pursuant to Rule 1.7. The inquiring attorney may not represent clients before those municipal bodies unless he/she reasonably believes the representation will not be adversely affected, and he/she obtains the consent after consultation of the municipality and of those clients he/she seeks to represent.

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 of other rules, regulations or laws that may have bearing on the issues raised by this inquiry.