

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2007-07 Request No. 936
Issued June 7, 2007

FACTS

The inquiring attorney represented a corporate client in 2005 in petitions before a city zoning board. The inquiring attorney states that the matter has been fully adjudicated, and that he/she has had no further involvement with the client.

The client now has plans to develop real estate in another town. Representatives of the client who worked with the inquiring attorney in 2005 recommended the inquiring attorney to corporate representatives who are assigned to the project in the other town. In March 2007, the inquiring attorney had lunch with corporate representatives for the new project, at which time there was discussion about the company's intention for the project in the other town. The inquiring attorney states that at the lunch there was discussion about the general philosophy of how he/she represents zoning clients, and of his past work. The company representatives inquired about the inquiring attorney's contacts in the town and about whether he/she had done other work in the town. They informed the inquiring attorney that they were speaking with and considering several other Rhode Island zoning lawyers about providing legal services related to the project. The inquiring attorney states that no plans or drawings were presented, and no substantive information was discussed relative to the project.

The company hired another law firm for the development in the other town. In April 2007 individuals who abut the site of the client's proposed development in the other town and who oppose the development requested the inquiring attorney to represent them.

ISSUE

The inquiring attorney asks whether it would be a conflict of interest to represent the individuals against his/her former corporate client.

OPINION

Pursuant to Rule 1.9 of the Rules of Professional Conduct, the inquiring attorney's representation of individuals who oppose a former client's development of real estate in one town after he/she represented the client in zoning matters for a development in another town is permissible, as the matters are not the same or substantially related.

REASONING

The corporate client is a former client of the inquiring attorney, and therefore Rule 1.9 applies. After the conclusion of the matter in 2005, the inquiring attorney had no further involvement with the client except a luncheon meeting two years later with company representatives who were considering several other lawyers for the project in the other town. That meeting was in the nature of an interview at which no substantive information about the new matter was discussed. Rule 1.9 states in pertinent part:

(a) A lawyer who has formerly represented a client in a matter shall not thereafter 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 gives informed consent confirmed in writing.

* * *

(c) A lawyer who formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter;

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client or when the information has become generally known; or
- (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

The subject of the inquiring attorney's representation of the individuals who oppose the former client's development of real estate in the other town is not the same or substantially related to the zoning matters in which he/she represented the former client in its development in another town. The Panel concludes that the inquiring attorney's previous representation of the company does not represent a conflict of interest in the proposed representation of the individuals, and that therefore, the representation of the individuals is permissible.

The Panel advises that in compliance with Rule 1.9(c) the inquiring attorney shall not use information related to the former representation to the disadvantage of the former client, and shall not reveal information relating to the former representation except as the Rules permit or require.