

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2007-08 Request No. 938
Issued June 2007

Facts:

In October 2006, the inquiring attorney was retained by a corporate client for the purpose of obtaining a license at a state agency. The client had previously filed an original application which was denied by the agency and for which an objection was filed. The inquiring attorney prepared and filed a “resubmission of application” for the license. The matter was scheduled for hearing, but has not yet been heard.

Recently the inquiring attorney was retained by an employee of the same state agency regarding possible termination of employment. The employee, also an attorney, served as a hearing officer at the agency in a capacity unrelated to the matter of the inquiring attorney’s corporate client. The inquiring attorney appeared on the employee’s behalf at a pre-disciplinary hearing regarding the agency’s allegations supporting the termination. Two days later, the employee received a notice terminating his/her employment.

On the same day, the inquiring attorney received a letter from legal counsel for the state office whose lawyers represent the various state agencies in employment disputes, stating that the inquiring attorney’s representation of the terminated state employee “presents a conflict of interest on many fronts which would require you to immediately disqualify yourself from representing clients with contested matters at [the agency] for the indefinite future. Obviously, in your capacity as attorney for [the former employee] . . . you have had the opportunity to acquire confidential information owned by the legal department at [the agency] through your representation.” The letter requested an immediate withdrawal from all contested matters involving the agency for the indefinite future.

Several days later when the inquiring attorney appeared on behalf of his/her corporate client at the agency hearing on its license application, the hearing officer, who was also the terminated employee’s supervisor, refused to go forward with the hearing stating that he/she was in possession of a copy of the letter to the inquiring attorney from the state’s legal counsel, and that the inquiring attorney had a conflict of interest. The matter was continued for two weeks.

Issue Presented:

The inquiring attorney asks whether it is a conflict of interest for him/her to represent a terminated agency attorney-hearing officer in an employment matter against the agency, and also to represent another client at a hearing at the same agency on the client's application for a license, which is contested.

Opinion:

The concurrent representations do not constitute a conflict of interest pursuant to Rule 1.7 of the Rules of Professional Conduct, and therefore both representations by the inquiring attorney are permissible.

Reasoning:

Rule 1.7 entitled "Conflict of Interest: Current Clients" is applicable to this inquiry. It states in pertinent part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Paragraph (b) of Rule 1.7 sets forth the criteria for waiver and is not applicable here.

The inquiring attorney's representation of a corporate client that is seeking a license at the agency is not directly adverse to the agency's terminated attorney-hearing officer. Further, there does not exist a significant risk, or even a small risk, that the representation of the inquiring attorney's corporate client will be materially limited by the inquiring attorney's responsibilities to the terminated employee, or that the representations of the agency's former employee will be materially limited by the representation of the corporate client. It is the conclusion of the Panel that the inquiring attorney's concurrent representations of the two clients do not present a conflict of interest. The inquiring attorney's representation of the corporate client at the agency, and his/her concurrent representation of the agency's terminated employee, are permissible under the Rules of Professional Conduct.

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.

