

Final

**Rhode Island Supreme Court Ethics Advisory Panel**  
**Opinion No. 2007-10**  
**Issued August 9, 2007**

Facts:

The inquiring attorney is licensed to practice law in New York and in Rhode Island. He/she was the general counsel for several years for a New York charitable organization that sold gift annuities as a fund raising mechanism. The organization therefore was subject to the jurisdiction of New York's insurance regulatory agency and its rules and regulations. The insurance regulatory agency had notified the organization that it was in noncompliance with certain regulations, and had threatened to revoke the organization's license to sell annuities.

The inquiring attorney represented the organization in discussions and negotiations with the insurance regulator in an effort to prevent the revocation of the organization's license. On the basis of representations that the organization authorized the inquiring attorney to make to the regulator, the regulator did not revoke the organization's license to sell annuities.

The inquiring attorney later resigned as general counsel for the organization. Several months after resigning, the inquiring attorney learned that representations that he/she had made to the regulatory agency relating to the organization's compliance, though true when he/she made them, may not be true now. The inquiring attorney believes that the organization may have renegeed on some of the commitments it made to the regulatory agency as conditions to retaining its license. He/she also believes that the organization may be in default of its fiduciary obligations to annuitants. The inquiring attorney asks if he/she is permitted to alert the New York regulatory agency.

Issue Presented:

The inquiring attorney asks this Panel whether it is permissible for him/her to disclose to a New York insurance regulatory agency information relating to the representation of a New York client.

Opinion:

Pursuant to the recently adopted choice of law provisions of Rule 8.5 of the Rhode Island Supreme Court Rules of Professional Conduct, the permissibility of the proposed disclosure is governed by the ethics rules of the jurisdiction in which the conduct will occur; or if the predominant effect of the conduct is in a different jurisdiction, then the

ethics rules of that jurisdiction shall apply. The Panel advises the inquiring attorney to seek guidance on the permissibility of the proposed disclosure from the New York ethics committee.

Reasoning:

Under these facts, the Panel would ordinarily decline to render an advisory opinion and would refer the inquiring attorney to its counterpart in New York. However, the Panel issues this opinion to highlight recent additions to Rule 8.5 of the Rhode Island Supreme Court Rules of Professional Conduct, effective April 15, 2007, relating to choice of law. In pertinent part, Rule 8.5 states as follows:

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

The Comment to Rule 8.5 explains:

A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with different rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's contact may involve significant contacts with more than one jurisdiction.

Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as

well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

The inquiring attorney, who is licensed to practice law in Rhode Island and in New York, proposes to disclose to a New York regulatory agency information relating to the representation of a New York client under a New York license. Pursuant to Rule 8.5(b)(3), the rules of the jurisdiction in which a lawyer's conduct occurs shall apply to the conduct. If the predominant effect of the conduct is in a different jurisdiction, then the rules of that jurisdiction shall apply.

The Panel is of the opinion that under the facts presented in this inquiry, and in accordance with Rule 8.5(b)(2), the permissibility of the proposed disclosure is governed by the ethics rules of the State of New York. Inasmuch as this Panel's jurisdiction is limited to interpreting the Rhode Island Rules of Professional Conduct, the Panel advises the inquiring attorney to seek guidance on the permissibility of the proposed disclosure from the New York ethics committee.