

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Opinion No. 2010-03 Request 974
Issued June 3, 2010**

FACTS

The inquiring attorney seeks to serve as trial counsel on behalf of a prospective client who is the plaintiff in the case. The inquiring attorney's law partner was formerly associated with the law firm that represents the defendant in the same case. While employed at the former law firm, the inquiring attorney's law partner conducted a deposition of the plaintiff, but was not the lead counsel in the case. The inquiring attorney asks whether he/she may represent the prospective client.

ISSUE PRESENTED

May the inquiring attorney serve as trial counsel on behalf of the plaintiff in a case, where the inquiring attorney's law partner conducted a deposition of the plaintiff on behalf of the defendant in the same case while formerly associated with another law firm?

OPINION

Pursuant to Rule 1.10(c), the inquiring attorney may serve as trial counsel on behalf of the plaintiff in the case, provided that his/her law partner is screened from participation and is not apportioned any fee from the case, and provided further that the defendant is notified.

REASONING

The starting point for this inquiry is the determination of whether the inquiring attorney's law partner has a conflict of interest under Rule 1.9. Rule 1.9 states as follows:

- (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.

The Panel is of the opinion that the inquiring attorney's law partner has a conflict of interest pursuant to Rule 1.9(a). The case in which the inquiring attorney seeks to serve as trial counsel on behalf of the plaintiff is the same matter in which the law partner's former law firm represented the defendant. The law partner conducted a deposition of the plaintiff while associated with his/her former law firm. In doing so, the law partner represented the defendant in the matter. Therefore, the law partner is disqualified under Rule 1.9 from now representing the plaintiff.

Rule 1.10 entitled "Imputation of conflicts of interest: General rule" is also pertinent to this inquiry. Rule 1.10(c), added to Rule 1.10 in the Supreme Court's 2007 amendments to the Rules, is a special provision that addresses imputation of conflicts of interest when lawyers move from one law firm to another, and which now permits screening in this limited situation. It states:

- (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:
 - (1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

The Panel concludes that pursuant to Rule 1.10(c) the inquiring attorney may serve as trial counsel on behalf of the plaintiff in the case, provided the law partner is screened from participation in the matter and is apportioned no fee from the case, and provided further that the defendant as the affected client is given written notice. The Panel advises that written notice to the defendant be made through defendant's counsel. The Panel refers the inquiring attorney to the definition of "screened" in section (k) of Rule 1.0 entitled "Terminology."