

Final

**RHODE ISLAND SUPREME COURT  
ETHICS ADVISORY PANEL  
Opinion No. 97-06, Request No. 705  
Issued April 10, 1997**

**Facts:**

The inquiring attorney has asked the Panel for advice on the proper course of conduct he/she must take under the Rules of Professional Conduct in two situations.

In the first situation, the inquiring attorney is the former solicitor for City A. A former employee of the city has asked the inquiring attorney to represent him/her in a claim against City A concerning retirement benefits. The inquiring attorney states that he/she was not involved in this matter as the city's solicitor. He/she further indicates that there was no confidential information acquired during his/her representation of City A that would be pertinent to the employee's case. The matter will be filed as a civil action in superior court, and does not require the inquiring attorney to appear before City A or its agencies on behalf of the employee.

In the second situation, the inquiring attorney represents a client against City B in a pending lawsuit, and represents another client in a matter before City B's zoning board. An attorney who is "of counsel" to the inquiring attorney and whose name appears as such on the inquiring attorney's letterhead, was subsequently retained by City B as its solicitor. The two attorneys also have separate law practices in the same office building. The attorneys propose an arrangement whereby the inquiring attorney will represent City B in the city's civil litigation. The solicitor has retained other counsel to represent City B in the two matters in which the inquiring attorney is an advocate against the city.

**Issues Presented:**

(1) Does the inquiring attorney have a conflict of interest in representing the former employee against City A in the superior court action? (2) May the inquiring attorney represent City B at the same time he/she represents clients whose interests are adverse to City B?

**Opinion:**

(1) The inquiring attorney may represent the employee as there is no conflict of interest under the Rules of Professional Conduct which precludes the inquiring attorney from representing the employee against the attorney's former client City A.

(2) The inquiring attorney may not simultaneously represent City B and clients whose interests are adverse to City B.

**Reasoning:**

Situation I: Rule 1.11(a) entitled "Successive Government and Private Employment" contains a broad prohibition that bars former government lawyers from representing clients in matters related to their governmental service. It provides:

- (a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public officer or employee.

Rule 1.9 is also pertinent to this inquiry because the inquiring attorney's prospective client has interests which are directly adverse to the attorney's former client, City A. Rule 1.9 states:

A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) 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 consents after consultation; or (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

The Panel concludes that the inquiring attorney is not prohibited by Rule 1.11 from representing the employee in a superior court action because the inquiring attorney did not participate in matters relating to the employee retirement benefits while he was City A's solicitor. The Panel further concludes that there is no conflict of interest under Rule 1.9, as the matter in which the inquiring attorney will represent the employee against City A is not the same or substantially related to matters in which he/she represented City A as its solicitor. The attorney may not use information relating to the representation of City A to its disadvantage. See Rule 1.9(b).

Situation II: It is the Panel's opinion that the inquiring attorney is precluded under Rule 1.7(a) from representing City B at the same time that he/she represents clients whose positions are directly adverse to the municipality. Even if the matters are wholly unrelated, there is a clear case of direct conflict where clients oppose each other in litigation, and Rule 1.7(a) applies. See Hazard and Hodes, The Law of Lawyering, at 243 (2d ed. 1994 Supp.). Rule 1.7(a) 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.

The interests of the inquiring attorney's current clients in the pending lawsuit and in the zoning matter are adverse to City B. See R.I. Sup. Ct. Ethics Advisory Panel Op. 90-36 (1990). In commenting on the practical effect of Rule 1.7(a), Hazard and Hodes note that the rule contemplates a per se ban on concurrent representation of clients whose interests are in direct conflict. See Hazard and Hodes, at 236.3. The Panel is of the opinion that the inquiring attorney could not reasonably believe that his/her representation of City B would not adversely affect the relationship with his/her current clients who have interests directly adverse to those of City B. Accordingly, client consent will not resolve the conflict.

The "of counsel" relationship between the inquiring attorney and the solicitor for City B can constitute an affiliation sufficient to trigger application of imputed disqualification under Rule 1.10(a) See Annotated Model Rules of Professional Conduct, at 168 (3rd ed. 1996). Moreover, the vicarious disqualification runs in both directions. See Formal Advisory Op. Bd. of State Bar of Georgia, Op. 93-1. Rule 1.10(a) states:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

Under the present circumstances, there is an impermissible conflict of interest under Rule 1.7(a) and Rule 1.10(a) in that the inquiring attorney represents clients whose interests are directly adverse to City B, at the same time that an attorney affiliated with the inquirer's firm serves as the city's solicitor. So long as an attorney affiliated with the inquirer's firm is the city solicitor, the inquirer may not represent clients whose interests are directly adverse to City B.

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 issue raised by this inquiry.