

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2024-06
Issued July 11, 2024**

FACTS

The inquiring attorney represents a client in an immigration matter. In the course of the representation, the inquiring attorney has prepared and filed an application for adjustment of status for the client and attended the client's personal interview with U.S. Citizenship and Immigration Services ("USCIS"). During the interview, USCIS informed the inquiring attorney that it had located an application for special agricultural worker status in his or her client's name dating from the 1980s. The application contained the client's name, date of birth, parents' names, and birth certificate, as well as a signature and photograph that looked like the client's. Nonetheless, the client denied having filed the application or having any knowledge of it whatsoever.

Following the interview, the inquiring attorney learned from the client's sibling, who the inquiring attorney does not represent, that the sibling had filed the special agricultural worker status application in his or her client's name in an attempt to gain the client entry into the United States. The inquiring attorney reports that the client has no knowledge of his or her sibling's actions.

Based on this information, the inquiring attorney informed the client's sibling that he or she should retain counsel to represent his or her interests in this matter. The inquiring attorney is concerned that he or she must now withdraw from representing the client because he or she is privy to the client's sibling's actions.

ISSUE PRESENTED

The inquiring attorney asks whether he or she must withdraw from representing the client under the Rules of Professional Conduct?

OPINION

It is the Panel's opinion that the inquiring attorney need not withdraw from representing the client under the Rules of Professional Conduct.

REASONING

Concurrent conflicts of interest are governed by Rule 1.7 of the Rules of Professional Conduct, which provides that:

- (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.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

“Rule 1.7 is grounded primarily upon the attorney’s duty of loyalty to his or her client.” See Markham Concepts, Inc. v. Hasbro, Inc., 196 F. Supp. 3d 345, 349 (D.R.I. 2016) (interpreting Rhode Island Rule of Professional Conduct 1.7). “Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing.” Rule 1.7, Comment [2].

In this case, the inquiring attorney asks whether the client’s sibling’s revelation of information germane to the representation has created a conflict of interest, such that the inquiring attorney must withdraw from representing the client. The inquiring attorney indicates that he or she has undertaken to represent the client in an ongoing immigration matter. The client’s sibling has attended at least one meeting with the inquiring attorney, during which the sibling divulged information to the inquiring attorney germane to the representation. However, the inquiring attorney has affirmed that no attorney-client relationship exists between him or her and the client’s sibling. Similarly, because the inquiring attorney has made clear to the client’s sibling that he or she should retain counsel to represent his or her interests, no prospective attorney-client relationship exists either. See Rule 1.18, Comment [2] (recognizing that “[a] person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a ‘prospective client’ . . .”). The absence of such a relationship or the

prospect of one precludes the creation of a conflict of interest under Rule 1.7(a). See Rhode Island Ethics Advisory Panel Opinion 2023-03 (finding no conflict of interest in the inquiring attorney's representation of a municipal agency in a dispute with one of its board members because the board member was not a client of the inquiring attorney). Accordingly, the Panel concludes that the inquiring attorney need not withdraw from and may continue to represent the client in the ongoing immigration matter.