

## **Final**

### **Rhode Island Supreme Court Ethics Advisory Panel Op. 2025-01 Issued January 09, 2025**

#### **FACTS**

The inquiring attorney represented a client with a potential Social Security Disability (“SSDI”) claim pursuant to a referral from the client’s workers’ compensation attorney. During the representation, the inquiring attorney filed an application for SSDI benefits on the client’s behalf in February 2024. The application was denied in April 2024, at which time the inquiring attorney requested reconsideration of the denial. The request for reconsideration was denied in August 2024. On September 9, 2024, the inquiring attorney filed a request for hearing, which remains pending.

The inquiring attorney reports that during this time his or her client was receiving workers’ compensation benefits. The inquiring attorney did not represent the client in the workers’ compensation matter. On November 14, 2024, the inquiring attorney learned that the client had settled the workers’ compensation matter pursuant to a settlement agreement signed in October 2024 in which the client affirmed that he or she had not applied for SSDI benefits and did not intend to become Medicare eligible within the next thirty (30) months. In response, the inquiring attorney terminated his or her representation of the client on November 15, 2024, and has not communicated with the client since.

#### **ISSUE PRESENTED**

The inquiring attorney asks: (1) whether he or she is required under the Rules of Professional Conduct to inform any tribunal of the client’s actions; (2) if so, whether he or she must first obtain the client’s informed, written consent before disclosing the information; and (3) to whom should such disclosure be made?

#### **OPINION**

It is the Panel’s opinion that the inquiring attorney is not required under the Rules of Professional Conduct to disclose the client’s actions to any tribunal.

#### **REASONING**

The instant inquiry requires the Panel to interpret the given facts in light of Rules 1.6, 1.9(c), and 3.3 of the Rules of Professional Conduct. Rule 1.6 concerns the confidentiality of information relating to the representation of a client:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent,

except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(3) to secure legal advice about the lawyer's compliance with these Rules; or

(4) to comply with other law or a court order.

“A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation.” Rule 1.6, Comment [1]. This principle “applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.” Id. The Panel has historically “interpreted this obligation broadly.” Rhode Island Supreme Court Ethics Advisory Panel Op. 97-23; see also Rhode Island Supreme Court Ethics Advisory Panel Op. 95-61; Rhode Island Supreme Court Ethics Advisory Panel Op. 94-42 (determining that even the identity of a client is confidential information protected by Rule 1.6).

“The duty of confidentiality continues after the client-lawyer relationship has terminated.” Rule 1.6, Comment [7]. This principle is embodied in Rule 1.9(c):

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Rule 3.3 pertains to an attorney's duty of candor toward a tribunal:

- (a) A lawyer shall not knowingly:
  - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
  - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

“This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal.” Rule 3.3, Comment [1]. In this regard, it imposes on lawyers “special duties . . . as officers of the court to avoid conduct that undermines the integrity of the adjudicative process.” Rule 3.3, Comment [2]. Such is the importance of candor in the adjudicative process that Rule 3.3 explicitly “qualifies” the lawyer’s duty of zealous advocacy and obligation to protect client confidences. See Rule 3.3, Comment [2].

Here, the inquiring attorney represented the client in applying for SSDI benefits. Any and all information relating to this representation is deemed confidential under Rule 1.6, including the inquiring attorney’s knowledge of the contents of the affidavit the client signed to settle his or her workers’ compensation case. See Rule 1.6, Comment [1]. Such confidentiality applies even though the inquiring attorney’s representation of the client has terminated. See Rule 1.9(c); Rule

1.6, Comment [7]. Therefore, pursuant to Rule 1.9(c) the inquiring attorney can neither “use information relating to the [former] representation to the disadvantage of the former client” nor “reveal information relating to the [former] representation,” except as the Rules of Professional Conduct permit.

One such exception is found in Rule 1.6(b)(4), which permits an attorney to disclose confidential information relating to a representation “to comply with other law or a court order.” See also Rule 1.9(c) (permitting disclosure of information relating to the representation of a former client “as these Rules would permit or require . . .”). Comment [6] to Rule 1.6 clarifies that “other law” includes Rule 3.3. Furthermore, Rule 3.3(c) unequivocally states that a lawyer’s duty of candor “appl[ies] even if compliance requires disclosure of information otherwise protected by Rule 1.6.” Thus, there is no question the inquiring attorney may properly disclose information relating to a representation to satisfy his or her obligation of candor under Rule 3.3.

The Panel’s inquiry now turns to whether Rule 3.3 imposes such a duty of disclosure on the inquiring attorney here. By its plain language, Rule 3.3 “governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal” or who is “representing a client in an ancillary proceeding conducted pursuant to the tribunal’s adjudicative authority, such as a deposition.” Rule 3.3, Comment [1]. Thus, the existence of a proceeding is a condition precedent for the applicability of Rule 3.3. This requirement attaches even in cases where “[a] lawyer . . . knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding . . . .” Rule 3.3(b). In this case, the inquiring attorney asks whether he or she must report the false attestation the client made in the affidavit settling his or her workers’ compensation matter; however, the inquiring attorney does not now, and never did, represent the client in that case. Accordingly, the duty of candor under Rule 3.3 does not attach here.

This conclusion is supported by the Panel’s past precedents. In Rhode Island Supreme Court Ethics Advisory Panel Op. 94-19, the inquiring attorney was retained by an insurance company to file suit to suspend workers’ compensation payments to a recipient who was allegedly operating a home business. The inquiring attorney confirmed the allegation following an investigation. The inquiring attorney also learned, however, that his or her law firm provided legal services to the recipient’s home business. On this basis, the inquiring attorney sought to withdraw from both matters. He or she asked the Panel whether he or she was nonetheless obligated to inform the Workers’ Compensation Court of the fraud.

As an initial matter, the Panel agreed with the inquiring attorney’s decision to withdraw from both matters due to the evident conflict of interest. With regard to the question of the inquiring attorney’s duty of candor, the Panel determined that the inquiring attorney was under no such obligation because he or she did not represent the recipient before the Workers’ Compensation Court. The Panel noted, however, that “[t]he attorney’s obligation would be different if the attorney were representing the recipient in the Workers’ Compensation proceeding.”