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IN THE MATTER OF ADVISORY COMMITTEE ON PROFESSIONAL ETHICS OPINION 749	:	SUPREME COURT OF NEW JERSEY DOCKET NO.: 091434 CIVIL ACTION ON APPEAL FROM THE SUPREME COURT ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

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BRIEF ON BEHALF OF
THE ADVISORY COMMITTEE ON PROFESSIONAL ETHICS
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COMBINED PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

Chasan Lamparello Mallon & Cappuzzo, PC (Petitioner) challenges Opinion 749, issued on October 24, 2025, by the Advisory Committee on Professional Ethics (ACPE), finding that a per se conflict arises when an attorney concurrently serves as corporation counsel for a municipality and as general counsel for a regional fire and rescue (RFR) organization of which that municipality is a member. (Pa3-11.)[2] Through Opinion 749, the ACPE explored the potential "dual role" played by an attorney under such circumstances, finding that such representation "would pose a substantial risk that the lawyer could not provide independent advice or diligent representation to one or both entities." Ibid.

Opinion 749 was issued in response to an inquiry concerning a proposed dual representation by an attorney wishing to retain his representation as corporation counsel for a municipality and apply for a general counsel position for a RFR organization serving that municipality. (Ra1-2.) The Inquirer stated that his firm had reviewed prior ACPE opinions and New Jersey Supreme Court decisions for guidance, concluding that such representation was permissible in

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[1] Because they are closely related, these sections are combined for efficiency and the Court's convenience.

[2] "Pb" refers to Petitioner's petition for review; "Pa" refers to Petitioner's Appendix; "Ra" refers to the ACPE's Appendix.

accordance with ACPE Opinion 292 (1974), and this Court's decision in In the Matter of Opinion 653, 132 N.J. 124 (1993). (Ra2.) However, the Inquirer asked the ACPE to confirm that the firm's interpretation was correct. Ibid.

As explained in Opinion 749, an attorney from the Inquirer's firm serves as corporation counsel for a Walsh Act municipality, and acts as attorney of record for that municipality. (Pa3.). His duties are defined by local ordinance, and generally include supervision of the execution, preparation, and enforcement of municipal contracts, deeds, documents, statutes, ordinances, resolutions, or legal correspondence, as well as the duty to prosecute and defend all legal matters for or against the municipality, its officials, departments, employees, or personnel. (Pa3-4.) He sought to represent a RFR formed under the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 to -35, which authorizes governing bodies of two or more local units to form a regional service agency for the provision of public services, such as those provided by the RFR. (Pa4.) According to the Inquirer, the RFR's member municipalities contracted to share the cost of fire and rescue services. Ibid. Moreover, representatives of the member municipalities serve on the RFR's "Management Committee," which governs the RFR by overseeing budgetary decisions, personnel matters, operational policies and strategic planning. Ibid.

In answering the inquiry, the ACPE examined In re Supreme Court

Advisory Comm. on Prof'l Ethics Opinion No. 697, 188 N.J. 549 (2006), as well as its own prior decisions concerning concurrent representation. (Pa5-8.) Under In re Opinion 697, 188 N.J. at 569, the ACPE found, there are three tiers of conflicts which can arise in the course of municipal representation: (1) where an attorney plenarily represents a municipal governing body; (2) where an attorney plenarily represents an agency subsidiary to the governing body; and (3) where an attorney's engagement by the governmental entity is limited and not plenary. (Pa5.) That is, if the attorney plenarily represents a municipality under (1) or (2), the "member of the municipal family" doctrine is applied, and a per se conflict of interest will be inferred. (Pa6-7.) Where, however, the attorney provides legal services in a lesser role under (3), the attorney is no longer subject to broad, per se restrictions, but is instead subject to case-by-case restrictions and recusals under RPC 1.7(a)(2) and RPC 1.8(k). (Pa7.)

The ACPE then considered Opinion 722,[3] "Conflict of Interest: Concurrently Serving as County Counsel and Mayor of a Constituent Faulkner Act 'Strong Mayor' Entity," (June 27, 2011), where it reasoned that case-by-

[3] The ACPE noted that the Inquirer cited Opinion 292, "Conflict of Interest Attorney for Fire District Municipal Practice" (October 17, 1974), in support of the proposed dual representation, but found that opinion to be inapposite because it examined a potential conflict involving an attorney who represented the board of fire commissioners for a municipality looking to represent a third party in a non-related legal matter in municipal court. (Pa10.)

case recusals were insufficient to address conflicts of interest that would arise if an attorney served concurrently as both county counsel and mayor of a constituent municipality. (Ra26-30; Pa7.) Rather, the ACPE there found a per se conflict in holding both positions due to the "substantial risk that the attorney's responsibilities to the municipality would limit the attorney's ability to provide independent advice or diligent and competent representation to the county." (Ra30; Pa7.)[4]

Turning to the inquiry here, the ACPE similarly concluded that competing loyalties–corporation counsel's duty of loyalty to promote the individual interests of the municipality and general counsel for the RFR's duty of loyalty to the collective interests of the consortium–present "inherent and unavoidable" conflicts of interest that preclude concurrent representation. (Pa8-9.) Therefore, in advising either the municipality or the RFR how to exercise its authority to allocate resources, the ACPE found that an attorney attempting to represent both would "regularly confront the reality that their interests not only are not coterminous but often will conflict." (Pa9-10.) For instance, an attorney could face a situation where he must advise the RFR on which firehouses should be closed, while at the same time advocating for the municipality's interest in

[4] The ACPE further found that this risk was only "exacerbated" in that instance due to the "substantial power and authority" wielded by a mayor of a Faulkner Act "strong mayor" municipality. (Ra30.)

keeping that same firehouse open. (Pa10.) And it is precisely these types of scenarios that the ACPE found to create "a per se structural conflict of interest, not remediable by case-by-case recusal, and [which] cannot be waived."[5] (Pa10.)

Thus, the ACPE issued Opinion 749, advising that attorneys may not concurrently represent plenarily both a municipality and a RFR in which that municipality is a constituent member. (Pa3-11.)

On November 14, 2025, Petitioner–who was not the original Inquirer–requested that the ACPE stay enforcement of the Opinion, to reconsider and reverse the Opinion, and for the Office of Attorney Ethics to not enforce the Opinion pending review by the ACPE or the New Jersey Supreme Court. (Pa12.) On November 25, 2025, Petitioner filed a Notice of Petition seeking Supreme Court review of Opinion 749 under Rule 1:19-8. (Pa1-2.) After briefing, on December 22, 2025, the ACPE denied the Petitioner's request for reconsideration and a stay of Opinion 749. (Ra24-25.)

[5] The ACPE noted that RPC 1.7(b)(1) and RPC 1.8(l) prohibit public entities from consenting to otherwise waivable conflicts of interest. (Pa10.).

ARGUMENT

THE ACPE CORRECTLY CONCLUDED THAT AN ATTORNEY CANNOT PLENARILY REPRESENT A MUNICIPALITY AND CONCURRENTLY REPRESENT A RFR IN WHICH THAT MUNICIPALITY IS A MEMBER.

According to Petitioner, Opinion 749 was issued in error because the ACPE did not consider or seek any facts in reaching its determination. (Pb3.) Had the ACPE considered such facts, Petitioner argues, it instead would have found that any potential conflicts could readily be addressed through case-by-case recusals. (Pb3-4.) But these arguments fail, as the ACPE fully considered the information provided through the initial inquiry, and thoroughly analyzed precedent from both this Court and its own opinions, prior to reaching its decision. (Pa3-11.) Petitioner ignores this analysis, and the conflicts structure laid out in In re Opinion 697, which forms the backbone of the ACPE's determination here. Thus, the Petition should be denied.

To begin, conflicts of interest are typically governed by RPC 1.7 and 1.8. Under RPC 1.7(a), an attorney is generally prohibited from representing a client if the representation creates "a concurrent conflict of interest." Certain exceptions exist to this general rule under RPC 1.7(b), however RPC 1.8(k) makes clear that an attorney employed by a public entity:

> shall not undertake representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.
>
> [Ibid.].

Under such circumstances, the conflict is not waivable. RPC 1.8(l); see also RPC 1.7(b)(1) (public entities cannot consent to dual representation). Thus, in the representation of public entities, the question of whether a conflict of interest exists marks both the beginning and end of the inquiry as to whether the representation is permitted. In re Opinion 697, 188 N.J. at 559.

In In re Opinion 697, 188 N.J. at 561-62, this Court explored the history of these Rules, highlighting that the 2004 amendments to the Rules of Professional Conduct eliminated the "appearance of impropriety" doctrine under former RPC 1.7(c)(2), which previously provided that:

> in certain cases or situation creating an appearance of impropriety rather than an actual conflict, multiple representation is not permissible, that is, in those situations in which an ordinary knowledgeable citizen acquainted with the facts would conclude that the multiple representation poses substantial risk of disservice to either the public interest or the interest of one of the clients.
>
> [RPC 1.7(c)(2)(repealed Nov. 17, 2003, effective Jan. 1, 2004).]

According to the Court, in eliminating this language, it had relied on the Pollock

Commission's recommendation, which stated that "[n]o rule has engendered as much criticism as that constituting 'the appearance of impropriety' as a separate ethics violation," largely due to its "vagueness and ambiguity." In re Opinion 697, 188 N.J. at 562 (alteration in original) (citations omitted). Instead, the new RPC 1.8(k) was designed to "place[] an obligation on lawyers for public entities to assess whether client representation would present a substantial risk to the lawyer's responsibilities to the public entity." Id. at 563 (alteration in original) (citations omitted).

However, while the adoption of RPC 1.8(k) "jettisoned" the "appearance of impropriety" test, it did not eliminate the "municipal family doctrine," which was often applied in conjunction with the former doctrine. In re Opinion 697, 188 N.J. at 566; see also In the Matter of the Advisory Comm. On Prof'l Ethics Opinion 621, 128 N.J. 577, 594-95 (1992) (according to the "municipal family doctrine" "a municipal attorney, an attorney who is a member of the governing body, an attorney for the board of adjustment, or a municipal prosecutor are all regarded as part of the official municipal family" and none may represent a private client before any other part of the municipality). The municipal family doctrine has not been abrogated. The Court in In re Opinion 697, 188 N.J. at 569, instead limited the contours of that municipal family doctrine by establishing a three-tier approach to potential conflicts under RPC 1.8(k):

> [I]f an attorney plenarily represents a municipal governing body, that attorney will be barred from representing private clients before that governmental entity's governing body and all of its subsidiary boards and agencies. If, however, an attorney plenarily represents an agency subsidiary to the governmental entity's governing body, that attorney will be barred from representing private clients before that subsidiary agency only. Finally, if the scope of an attorney's engagement by a governmental entity is limited and not plenary, that attorney and his or her law firm are exempt from the strictures of the now-circumscribed "municipal family doctrine," but, in any event, the scope of the engagement remains relevant in determining whether the proscriptions of RPC 1.8(k) have been observed.

In all scenarios, any attorney employed by or representing a public entity in any capacity must comply with RPC 1.8(k) before undertaking representation of another client before that public entity or its board or agencies. Id. at 568-69.

Despite In re Opinion 697's focus on conflicts involving private clients, the ACPE then subsequently expanded its holding to concurrent representation of public clients as well. (Pa6.) For instance, in Opinion 722, the Committee found a per se conflict in an attorney serving as both county counsel and mayor in a Faulkner Act municipality. (Pa7; Ra26.) And in Opinion 736, "Lawyer May Concurrently Serve as Municipal Prosecutor and Planning Board Attorney in Same Municipality; Superseding Opinions 452 and 366" (June 25, 2019), although finding no conflict of interest existed when serving as a municipal prosecutor and planning board attorney in the same municipality, the ACPE

nevertheless analyzed the conflict in accordance with In re Opinion 697. (Pa6; Ra33-34.)

Here, the ACPE's finding of a per se conflict of interest when an attorney concurrently serves as corporation counsel for a municipality and as general counsel for a RFR of which that municipality is a member is in accord with In re Opinion 697 and the ACPE's subsequent application of its holding. (Pa3-11.) While recognizing that the interplay between the RFR and its constituent municipalities does not fit the traditional mold of a "municipal family," the ACPE nonetheless reasoned that the ethical concerns underlying that doctrine were still present. (Pa8-10.) That is, the ACPE determined that there is an inherent conflict in representing both entities concurrently, as corporation counsel for the municipality would owe a duty to promote the individual interests of that municipality, whereas general counsel for the RFR would owe a duty to promote the collective interests of the consortium – not just that one constituent member–much like the county counsel and mayor scenario presented in Opinion 722. (Pa6.) And because an attorney attempting to act as counsel for both the RFR and its constituent municipality would regularly confront situations where these interests would be at odds, case-by-case recusals would offer insufficient safeguard for this inherent conflict. (Pa10.)

Petitioner does not dispute that RPC 1.8(k) controls the analysis here, but

instead argues that its longstanding dual representation of the Township of North Bergen and the North Hudson Regional Fire and Rescue (NHRFR) demonstrates that "precious-few" conflicts occur under the circumstances outlined in Opinion 749. (Pb4; Pb7-8.) According to Petitioner, these conflicts "can be, and have been, easily addressed on a case-by-case basis with the ready assignment of other counsel." (Pb8.). But Petitioner is mistaken.

First, Petitioner does not argue that its services to the municipality constitute "lesser" level of representation under the third tier of In re Opinion 697's conflict analysis. 188 N.J. at 569. Indeed, Petitioner's brief and certification suggest just the opposite–it is substantially involved in the legal representation of the municipality, performing such services as: (1) preparing resolutions and ordinances; (2) preparing municipal contracts; (3) representing the municipality on a wide variety of labor matters; (4) ensuring the municipality's compliance with statutory mandates; (5) defending the municipality in litigation; and (6) advising the Mayor, Commissioners, Township Administrator and department heads on various legal issues. (Pb5-6.) Similarly, Petitioner is intimately involved in providing legal advice and defense to the NHRFR and its Management Committee. (Pb6-7.) Thus, even under the facts presented by Petitioner, the proposed dual representation would fall under either the first or second tier of the In re Opinion 697 analysis, creating

a per se conflict under RPC 1.8(k). In re Opinion 697, 188 N.J. at 569.

Second, Petitioner's argument that it does not "promote" the interest of governmental entities, but is instead retained to "protect" their interests is equally misplaced. (Pb12.) While Petitioner correctly states that local governmental entities are limited to the powers delegated to them by the Legislature and State Constitution, see Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 225 (1980) ("it is established beyond question that municipalities, being created by the State, have no powers save those delegated to them by the Legislature and the State Constitution"), the cases Petitioner cites thereafter are neither binding on this Court nor pertinent to the issue at hand. See Weymouth Twp. Bd. of Ed. v. Wolf, 178 N.J. Super. 481 (Law Div. 1981) (addressing governmental entities' right to assert defamation cause of action); College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 919 F. Supp. 756, 759 (D.N.J. 1996) (governmental entities cannot maintain causes of action for defamation, slander, or libel); Johnson City v. Cowles Commc'ns, Inc., 477 S.W.2d 750, 752-53 (Tenn. 1972) (municipal corporation is not a "person" within the meaning of Tennessee's libel statutes.). (Pb12.) Moreover, these cases do not alleviate the chief concern of the ACPE with respect to the proposed dual representation–that, "[i]n advising either the RFR or the municipality on how to exercise its authority to allocate resources in any particular situation, a

lawyer attempting to act as counsel for both entities would regularly confront the reality that their interests not only are not coterminous but often will conflict." (Pa9-10.)

Finally, Petitioner argues that Opinion 749 erroneously expands the scope of what the ACPE was asked to address. (Pb12-13.) Specifically, Petitioner asserts that Opinion 749 impacts not only Walsh Act municipalities–as presented in the original inquiry–but could affect "any number of the over 560 municipalities in New Jersey" as well as the "numerous regionalized entities throughout New Jersey dealing with numerous municipal services." (Pb13.)[6] While the ACPE recognizes that Opinion 749 applies not only to the original Inquirer's proposed conflict, its reach is in line with the ACPE's role of resolving all inquiries concerning proper conduct for attorneys under the Rules of Professional Conduct. R. 1:19-2. More specifically, through this inquiry, the ACPE was tasked with addressing whether a conflict of interest existed under RPC 1.8(k) if an attorney were to represent both a municipality and an RFR of which that municipality was a member. (Pa3.) That is exactly what happened here, and the ACPE answered in the affirmative. (Pa3.)

In short, Opinion 749 is in accord with the reasoning of the Court in In re

[6] Petitioner makes this general claim without any factual support or citation. Indeed, the Petitioner itself is a firm concurrently representing a Walsh Act municipality and an RFR. (Pa4.)

Opinion 697 and subsequent ACPE Opinions. Because an inherent unwaivable conflict emerges when an attorney seeks to represent both an RFR and a member municipality, dual representation is simply not permissible under RPC 1.8(k). Accordingly, Opinion 749 should be upheld.

CONCLUSION

For these reasons, the Court should uphold Opinion 749 and deny the Petitioner's request for its reversal.

Respectfully submitted,

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