



ILLINOIS STATE
BAR ASSOCIATION

ISBA Professional Conduct Advisory Opinion

Opinion No. 16-05
October 2016

Subject: Conflict of Interest; Government Representation; Nonlawyer Assistants

Digest: A law firm may continue to represent a city in municipal matters even though a paralegal employed by the firm is a member of the city council and the council has authority over the work and whether the firm's bills get paid.

References: IRPC 1.7;
IRPC 5.3;
ISBA Opinion 12-12

FACTS

The inquirer asks whether the firm will be involved in a conflict of interest if a paralegal of the firm is appointed or elected to city council. The firm has a contract to provide legal services to the city, and the city council has the ultimate authority over the work of the firm and the payment of its bills.

QUESTION

Does membership on the city council by an employee of the firm give rise to an actual or potential conflict or the appearance of impropriety on the part of the firm?

ANALYSIS

Rule 1.7 is the general conflict rule. It prohibits "concurrent" conflicts of interest. Such a conflict may exist under either of two situations: first, "where the representation of one client will be directly adverse to another client" (1.7(a)(1)); and second, where 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”(1.7(a)(2). This latter conflict may be waived under certain circumstances.

We do not believe the present situation poses a risk of violation of either of the above sections of Rule 1.7. The firm and the paralegal are not adverse within the meaning of 1.7, and there is only one client involved. Thus there is no direct adversity under 1.7(a)(1).

Nor do we believe there is a material interest conflict under section 1.7(a)(2). While it is conceivable that the paralegal might take a position on an issue involving the firm’s representation of the city contrary to the city’s majority position, we do not believe this poses a “significant risk” that the representation of the city by the firm would be “materially limited” in any way. We do not believe there is a substantial risk that the firm would not represent the city to the best of its ability just because the paralegal may have voted against the action the firm will be taking on behalf of the city. Moreover, and more importantly, it is likely that the ethics rules of the city may well preclude the paralegal from voting on issues involving the firm.

IRPC 5.3 should also be considered. This Rule sets out the responsibilities of a lawyer and law firm regarding nonlawyer assistance. The Rule requires lawyers having firm managerial authority or a lawyer with supervisory authority over a nonlawyer employee to “ensure that the person’s conduct is compatible with the professional obligations of the lawyer” and “be responsible for conduct of such person that would be a violation of the Rules of Professional Conduct . . .” IRPC 5.3(a)-(c). While this Rule would apply to the paralegal’s work for the firm, we do not believe the Rule applies to the outside activities of the paralegal such as serving as a member of city council. Comment 1 to the Rule talks about insuring that nonlawyers who “work on firm matters act in a way compatible with the professional obligations of the lawyer.” We do not believe that service on the city council by the paralegal is tantamount to work on firm matters. Thus, while the paralegal might be more than willing to approve a fee payment to the paralegal’s firm, we believe such a “conflict” must be resolved by the city, not the law firm.

The “appearance of impropriety” is no longer an ethical issue in Illinois. See ISBA Opinion 12-12 (May 2012) for a detailed discussion of its demise.

Finally, it should be noted that this opinion attempts to address only issues arising under the Rules of Professional Conduct. Illinois statutes, local ordinances, and other rules regarding conflicts of interest may be relevant to lawyers who represent, or appear before, public entities or to employees of law firms engaged in activities outside the firm.

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