



ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.7. See also ISBA Ethics Advisory Opinion 90-34. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 86-13
January 9, 1987**

Topic: Lawyer in Public Office; City Attorneys; Conflict of Interest

Digest: Neither a City's Corporation Counsel nor members of his firm may, in their private practice, represent clients criminally charged under State statutes where the acts charged may also constitute city ordinance violations and where the charges were initiated or will be supported by City police officers.

Ref.: Rules 5-105(a) and 5-105(d)
ISBA Opinion Nos. 729, 737, 748, 789, 791, 823, 852, 871, 84-3, 84-11, 86-2, 86-4, 86-5

FACTS

The ordinances of a particular Illinois city establish a Law Department consisting of both a city attorney and a corporation counsel. Such ordinances designate the city attorney as the legal advisor to the city in all matters concerning the legal and business interests of the city. The city attorney is specifically vested with the responsibility for defending the city or its officers when rights, ordinances, orders or acts of the city are brought into question. The corporation counsel is designated by the city ordinances to perform all duties of corporation counsel under the laws of the State, and to act on behalf of the city in other specified particulars.

The corporation counsel of the city has been asked, incident to his private legal practice, to represent clients charged with having criminally violated State statutes in instances where the alleged violations took place within the city limits and the citations or indictments were brought or are supported by police officers employed by the city.

QUESTION

May the corporation counsel, or members of his firm, represent clients charged under State statutes where the citations or indictments are made or supported by city police officers?

OPINION

The resolution of potential conflicts involved in the work of lawyers who also hold positions as public attorneys has been the issue most frequently dealt with by this Committee. We have recently examined this issue in some detail in Opinion No. 86-4. Other opinions analyzing this question under varying factual circumstances include Opinion Nos. 729, 737, 748, 791, 823, 852, 84-3, 84-11, 86-2, and 86-5.

Our prior opinions may be briefly summarized as recognizing that the acceptance of private employment by a public employee is proper only where the matter is in an area wholly unrelated to the areas in which the attorney might or could have duties or responsibilities for the public. See Opinions 729, 871. Such opinions are generally founded on the provisions of Rule 5-105(a) to the effect that a lawyer shall not undertake or continue representation of a client if the interests of another client might impair his professional judgment. See Opinion No. 84-11.

The question here presented is most closely akin to Opinion No. 748 (January 1982), where the Committee found it improper for a salaried city attorney or the members of his firm to accept employment for criminal defense in cases where the alleged crime occurred within the territorial limits of the city. It was there recognized that, although many of the charges involved in such cases were brought under state statutes as opposed to city ordinances, they would at the same time constitute city ordinance violations. In the present instance, the situation is further complicated by the fact that the prosecutions were in fact initiated and/or will be supported by the testimony of the city's police officers. Under such circumstances, we believe that a conflict exists such as would disqualify not only the corporation counsel from undertaking such representation, but also disqualify other members of his firm under Rule 5-105(d).

We are also of the view that the existence of such conflict is not waivable by the city under the guidelines discussed in Opinion No. 86-4 because the matters involved are substantially related.

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