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ETHICS ADVISORY PANEL
OPINION #93-88 REQUEST #431
Issued October 19, 1993

The inquiring attorney is a member of City A's police department. He/she is assigned to the position of legal counsel for the police department and provides legal advice to it on various issues. He/she also serves as an Assistant City Solicitor for City A whereby he/she represents City A in the Family, District and Municipal Courts. The inquiring attorney asks whether his/her relationship with City A precludes him/her from performing research for law firms on civil cases unrelated to City A, or from accepting a fee for cases referred by him/her to a law firm that represents clients in matters involving City A. The inquiring attorney would be paid at an hourly-rate as an independent legal researcher.

The issues raised by this inquiry implicate several of the Rules of Professional Conduct. At the outset, the Panel notes that inquiring attorney has client/lawyer relationship with City A by virtue of his/her position as an Assistant City Solicitor. See, Opinion #90-14 (Issued September 18, 1990). Thus, under Rule 1.7 (Conflict of Interest: General Rule), the inquiring attorney may not represent any client with interest directly adverse to City A.

Using that as a backdrop, the propriety of the inquiring attorney performing research on civil cases unrelated to City A, or of him/her accepting a fee for cases he/she refers to a law firm representing clients involving City A, is addressed by Rule 1.11 entitled "Successive Government and Private Employment." That Rule provides in pertinent part as follows:

Rule 1.11. Successive Government and Private Employment. - (a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public officer or employee. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

- (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(d) Except as law may otherwise expressly permit, a lawyer serving as public officer or employee shall not:

(2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially...

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Though Rule 1.11 addresses successive government and private employment, this Panel has applied it to situations involving simultaneous government and private practice. See, Opinion #~~93~~⁹²-70 (Issued January 13, 1993).

Rule 1.11(a) embodies the general prohibition of representing a private client in connection with a matter in which the lawyer participated as a public officer or employer. Under these facts, the inquiring attorney is employed as both a police officer of City A and as an Assistant City Solicitor of City A. As a result of his/her positions, he/she is disqualified from participation in any matter in which he/she participated as a public employee.

Under Rule 1.11(d), the inquiring attorney may not negotiate private employment or research projects with the private law firm while any member of the private law firm is an attorney in any matter in which the inquiring attorney is participating personally and substantially on behalf of City A.

Further, though the inquiring attorney is not a full-time member of the law firm he/she desires to work for, the Panel believes Rule 1.11(a) extends to situations in which a government lawyer becomes an independent researcher for a firm. Thus, the Panel believes the inquiring attorney's relationship with the law firm triggers the imputed disqualification principle under Rule 1.11(a). Accordingly, the Panel concludes that the law firm with which the inquiring attorney seeks to perform research may not undertake or continue to represent a private client in a matter in which the inquiring attorney participated as a government employee unless the inquiring attorney is screened from any participation in the matter and receives no part of the fee pursuant to Rule 1.11(a)(1) and the municipality is notified.

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under the State Ethics Code or any other rules, regulations or laws that may have bearing on the issue raised by this inquiry.