

Final

ETHICS ADVISORY PANEL
OPINION # 95-33 - REQUEST # 598
ISSUED - OCTOBER 12, 1995

The inquiring attorney is a former employee of a state agency. During that employment, there was an ongoing investigation of "A" within the agency. The inquiring attorney states that while he/she was aware of the investigation, he/she did not personally participate in the investigation of "A" and has no knowledge of any confidential information about "A." The inquiring attorney is currently employed at a law firm which represents "A." While at the law firm, the inquiring attorney has not worked on any of "A's" cases and has not participated in any of "A's" matters. The inquiring attorney asks whether he/she may participate in the representation of "A" in connection with the pending criminal investigation and also the non-criminal civil matters arising out of the same transaction on which the criminal investigation is based.

The issues raised by this inquiry invoke Rule 1.11 of the Rules of Professional conduct entitled "Successive Government and Private Employment." That Rule provides in pertinent part as follows:

(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

(b) Notwithstanding any other provisions of this Rule, a lawyer who has been employed by any government office or agency shall not represent a private client before that government office or agency for a period of one year following the termination of such employment.

As a result of being employed at the state agency, the inquiring attorney learned specific information regarding A and A's case. Rule 1.11(a) clearly states that a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public employee. Further, the law firm may not continue the representation of A unless the former government lawyer is screened from the matter. In addition, Rule 1.11(b) prohibits an attorney who was employed by any government agency from representing a private client before that same agency for a period of one (1) year. While the inquiring attorney may not represent A in the criminal charges, the law firm may continue to represent A in the criminal matter if the inquiring attorney is properly screened from the matter and is apportioned no part of the fee and proper notice is given to the state agency in accordance with the rule.

With regard to the civil matters, Rule 1.11(a) prohibits the inquiring attorney from representing A because he/she participated in meetings whereby the case was discussed. The inquiring attorney became aware of the situation by virtue of his/her employment with this agency. The Panel cautions the inquiring attorney regarding Rule 1.6 "Confidentiality of Information." The law firm is able to continue representing A in the civil matters under Rule 1.11(a) so long as the inquiring attorney is properly screened from this matter and is apportioned no part of the fee and proper notice is given to the state agency in accordance with the rule.

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.