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Informal Opinion 07-03
Lawyer as Town Attorney and Town Public Safety Director

A lawyer (the “Lawyer”) who acts as a Town Attorney was recently appointed Public Safety Director for the same town (the “Town”). The Town employs department chiefs who directly supervise the Town police and fire departments. However, as Public Safety Director, the Lawyer is also responsible for the efficiency, discipline and good conduct of the Town’s police and fire departments. In addition to his work for the Town, the Lawyer maintains a general law practice, with an office located outside of the Town. Although the Lawyer’s firm employs associate attorneys, “he is the attorney of record and handles all substantive aspects in most cases.” The Lawyer has ceased representation of clients with cases originating in the Town’s police department; however, the Lawyer continues to represent clients with cases originating in other town police departments, both within the Geographical Area (G.A.) in which the Town is located, as well as in other G.A.s.

An informal opinion is requested as to whether the Lawyer’s continued representation of clients with cases originating in other town police departments creates an ethical conflict. Our opinion is confined to the Rules of Professional Conduct and does not extend to the Town’s ordinances and regulations, which could alter our analysis.

Rule 1.7(b) of the Rules of Professional Conduct provides:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation . . .

In inquiries analogous to this, we previously addressed whether a conflict of interest arises when a municipal police officer is also a practicing attorney. See Informal Opinions 03-13 and 92-4. In those opinions, we concluded that Rule 1.7 does not preclude a lawyer who is also a municipal police officer from representing criminal defendants in other jurisdictions, provided the lawyer has no obligations to police departments other than his own.

Like a municipal police officer, a town's public safety director has responsibilities to the town's police department, which could materially limit his representation of a criminal defendant in cases within his police department's jurisdiction. However, as set forth in Informal Opinions 03-13 and 92-4, we conclude here that Rule 1.7 does not preclude his representation of criminal defendants outside of his police department's jurisdiction. As stated by the Committee in Informal Opinion 92-4:

Criminal defendants may seek your legal services because they believe a police officer/lawyer will give them an advantage unavailable through other lawyers. Even if they do not possess this knowledge, your position as a police officer is material to a criminal representation, and should be disclosed to the client. Rule 1.3. Rule 8.4 states “[i]t is professional misconduct for a lawyer to: . . . (3) [s]tate or imply an ability to influence improperly a government agency or official.” You should explain to the client that you cannot improperly influence any government agency or official on his or her behalf.

Additionally, you should disclose to the client that you may be required to withdraw if investigation reveals that your department is materially involved. Rule 1.7; Rule 1.16.

As long as you do not improperly exploit your dual positions, and disclose the relevant limits of your conduct as attorney, and the possibility of your having to withdraw, there appears to be no compelling reason to prevent you from defending criminal defendants in other jurisdictions, provided your department is not materially connected to such case.

The Committee recommends that Informal Opinion 92-4 be reviewed for analysis of additional limitations which are applicable to a lawyer who is also a police officer and, by analogy, applicable to this inquiry as well.

Finally, the Committee directs your attention to Informal Opinion 05-09, wherein the Committee stated:

Formal Opinion 47 advises that, when a lawyer serves as a public official, such as town attorney, the perception of impropriety in the public official is as important as the potential for actual impropriety. While the Rules of Professional Conduct, when they supplanted the Code of Professional Responsibility, substituted Rule 1.7(b) and related rules for the “appearance of impropriety” standard found in the code, a lawyer serving as a public official should be mindful of the public’s concerns, specifically, “Will the lawyer stay his or her hand to preserve her public office, or, on the other hand, subordinate the importance of her public office to her client’s interests? Will the lawyer’s involvement expose the client’s matter to be heightened public scrutiny, or to legal attack?” Formal Opinion 47.

Additionally, in examining all relevant law which may govern the conduct of . . . [the town attorney or director of public safety], . . . [the public official] may also wish to consult Low v. Madison, 135 Conn. 1 (1948), and . . . [the] local Municipal Code of Ethics.

Informal Opinion 05-09.

THE COMMITTEE ON PROFESSIONAL ETHICS

By _____
Wesley W. Horton, Chair