



Professional Ethics Committee

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INFORMAL OPINION 2011-11

Attorney Serving as Municipal Corporation Counsel – Potential Issues
Arising from Prior Representation of Individual Client

An attorney currently serves as corporation counsel to a Connecticut municipal corporation. The attorney advises that, in his capacity as corporation counsel, he acts specifically as legal adviser to the municipal corporation, its elected officials, and its various boards, commissions and authorities in matters relating to their official duties. The attorney further advises that, with specific respect to the municipal corporation's boards, commissions and authorities, the municipal charter provides that only the board, commission or authority as an entity, and not an individual board member, is authorized to request a legal opinion or otherwise obtain legal services from corporation counsel.

The attorney discloses that prior to becoming corporation counsel he represented an individual client with respect to the individual's personal legal affairs. None of the prior representations involved the municipal corporation. The attorney reports that the individual client has since become a member of one of the municipal corporation's boards, an entity to which the attorney as corporation counsel would provide legal advice in conjunction with that board's official duties. Since becoming a member of the municipal corporation's board, the client has retained counsel other than the attorney to represent the client with respect to his personal legal affairs.

The attorney inquires as to whether his prior representation of the individual client constitutes an impermissible conflict of interest or otherwise runs afoul of the Rules of Professional Conduct applicable to

attorneys practicing in Connecticut.¹ For the reasons set forth below, we conclude – subject to certain caveats noted below—that no impermissible conflict or other violation of the Rules of Professional Conduct arises under the circumstances described.

As a threshold matter, Rule 1.11 (d) (1) of the Rules of Professional Conduct makes explicit that Rules 1.7 and 1.9, regarding conflicts of interest, are applicable to any lawyer serving as a public officer or employee. Further, Rule 1.13 (a) makes it clear that by virtue of his position as corporate counsel, the attorney represents the municipal corporation acting through its duly authorized constituents.

Rule 1.7 (a) generally prohibits representation of a client where that representation would involve a “concurrent conflict of interest.” A “concurrent conflict of interest” arises in two distinct situations: either (i) the contemplated representation of one client will be directly adverse to the other client, or (ii) there is a significant risk that the representation of one or more clients would be materially limited by the lawyer’s responsibility to another client, a *former client*, or a third person. (*Emphasis supplied*) Here, the attorney is not representing the individual in a matter directly adverse to the municipal corporation (or vice-versa), and therefore the first situation does not arise. As to the second situation, given the fact that the attorney’s prior representation of the client did not involve the municipal corporation in any way, it would appear unlikely that the attorney’s current representation of the municipal corporation would be materially limited by the attorney’s responsibilities to the individual client; nevertheless, it is possible that for reasons not expressly disclosed to the Committee (including, potentially, information protected from use or disclosure under Rule 1.6), a material limitation could conceivably arise. Accordingly, as a matter of professional responsibility the attorney must carefully and reasonably analyze all aspects of his relationship with the individual client pursuant to Rule 1.7 (a) (2) to determine if the attorney has any responsibilities to that client which could reasonably limit his on going representations of the municipal corporation. If the attorney reasonably concludes that no such limitations exist, Rule 1.7 would not prohibit his continued representation of the municipal corporation. If the attorney reasonably concludes that such limitations do exist, the prohibition of Rule 1.7 may be overcome by complying with Rule 1.7 (b) (1) - (4). More specifically, the representation may proceed if: the attorney reasonably

¹ The attorney specifically inquired as to the application of Rules 1.7 and 1.13 of the Rules of Professional Conduct.

believes that he will be able to provide competent and diligent representation to each affected client; the representation is not prohibited by law;² the representation will not involve the assertion of a claim by one client against another in the same proceeding; and each affected party gives its informed consent confirmed in writing.

Under the facts provided, the attorney is no longer representing the individual client with respect to the client's legal affairs. Accordingly, the individual client is a "former client" and the attorney is also subject to the provisions of Rule 1.9. Under that rule, a conflict would arise in the situation where attorney undertook to represent the municipal corporation (or, for that matter, any other person or entity) in connection with the same matter (or a matter substantially related to it) in which he previously represented the individual client and in which municipal corporation's interests were materially adverse to the individual client, unless the client gave informed consent confirmed in writing. That is not the case here, nor is it likely to arise since the attorney informs us that the prior representation of the individual client did not involve the municipal corporation. Further, Rule 1.9 also prohibits the attorney's use to the detriment of the client of any information learned in the context of the prior representation of the client, unless that information has become generally known or as otherwise permitted by the Rules of Professional Conduct.

In addition to the restrictions imposed by Rules 1.7 and 1.9, should a matter in which the attorney formerly represented the individual client somehow come before the municipal corporation, the attorney is prohibited under Rule 1.11 (d) from participating in that matter absent the municipal corporation's informed consent, confirmed in writing.

In sum, we believe it unlikely that the attorney's prior representation of the individual client would provide an ethical impediment to the attorney's representation of the municipal corporation under the facts presented. However, we also caution that the attorney must undertake the analyses required under Rules 1.7, 1.9 and 1.11 (d) to determine if there exist material limitations and/or confidentiality concerns, beyond the information supplied to the Committee, which would adversely affect the attorney's ability to proceed with

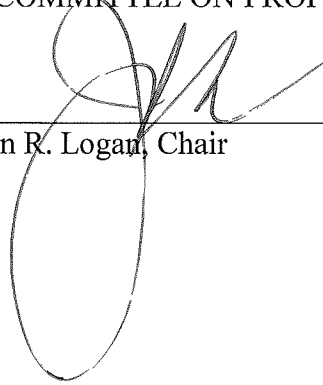
² Whether a given, proposed representation is prohibited by law is a matter to be considered on a situation-by-situation basis, and is in any event beyond the scope of this opinion. Practitioners are cautioned, however, to consider the full ambit of potentially applicable law in making such a determination, including but not limited to federal, state and local statutes, regulations, ordinances, and ethics codes.

representation of the municipal corporation.

THE COMMITTEE ON PROFESSIONAL ETHICS

By

John R. Logan, Chair

A handwritten signature in black ink, appearing to be 'J.R. Logan', is written over a horizontal line. Below the signature is a large, vertically oriented oval scribble.