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Standing Committee on Professional Ethics

January 19, 2022

INFORMAL OPINION 2022-01

REPRESENTATION OF INDIVIDUAL FOLLOWING EMPLOYMENT BY MUNICIPALITY: RULE 1.11

A Connecticut lawyer (the "Requestor") seeks guidance on whether he may serve as counsel in a motor vehicle-related personal injury matter adverse to a municipality (the "Municipality") and the Municipality's employee (the "Employee"). The Requester previously worked for the Municipality at issue for roughly five months. While the case at issue (the "Current Case") had been pending during the time he worked at the Municipality, he was personally unaware of it. He did not work on the case, nor did he do any work on any other matter involving the actions of the same Employee. The Requester did do background research on another unrelated motor vehicle personal injury matter while working at the Municipality.

The issue presented is whether the Requestor's prior work for the Municipality precludes him from representing an individual adverse to the Municipality and its Employee in the Current Case. While Rule 1.9 of the Rules of Professional Conduct (the "Rules") generally governs potential conflicts of interest involving former clients, Rule 1.11, entitled Special Conflicts of Interest for Former and Current Government Officers and Employees, applies here.

The relevant portion of Rule 1.11, which deals with former government employees, states:

> (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:
>
> (1) is subject to Rule 1.9(c); and
>
> (2) **shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee**, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(Emphasis added).

Rule 1.9(c) prevents a lawyer from utilizing information gained from a former client to that client's disadvantage.[1] Thus, to the extent the Requestor learned information about the Municipality or its Employee during his prior work for the Municipality that would be utilized to the Municipality or Employee's disadvantage in the current representation, Rule 1.9(c) would prohibit the representation. Here, however, the Requestor indicated that he was unaware of the Current Case during his employment by the municipality and did no work on any matters involving the Employee. While the Requestor stated that he did some background

[1] Rule 1.9(c) states that "[a] lawyer who has formerly represented a client in a matter . . . shall not thereafter: (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known, or (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client."

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research on an unrelated motor vehicle personal injury matter while at the municipality, it is unlikely information learned as part of that background research would trigger Rule 1.9(c).[2]

Subsection (a)(2) disqualifies a former government attorney from representing a client in connection with a matter if the lawyer participated "personally and substantially" in that matter as a public employee. "Matter" is defined to include:

> (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.

Here, the Requestor did not work on, or even know about, the Current Case while employed by the municipality. Nor did the Requestor do any work on any matters involving the Employee. Based on this, it appears that the Current Case is not the same "matter" as previous work done for the Municipality since it does not involve the same party or parties. While the Requestor did conduct background research on a similar matter, the similarity in subject matter is not a sufficient basis for disqualification. This conclusion is supported by the Official Commentary to Rule 1.11, which explains that the Rule "represents a balancing of interests" between the government's need to protect "confidential government information" and the "legitimate need to attract qualified lawyers." The Commentary goes on to conclude:

> Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially.…The limitation of disqualification in subsections (a) (2) and (d) (2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

In conclusion, provided that the Requestor did not gain confidential information that could be used to the Municipality's disadvantage in the Current Case, it is the Committee's opinion that the Requestor would not run afoul of Rule 1.11 if he were to participate in the Current Case adverse to the Municipality because the Requestor did not personally and substantially work on the same matter as the Current Case while employed by the Municipality.

THE COMMITTEE ON PROFESSIONAL ETHICS

Kim E. Rinehart

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BY Kim Rinehart, Chair

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[2] *Compare Green v. City of New York*, No. 10 Civ. 8214(PKC), 2011 WL 2419864 (S.D.N.Y. June 7, 2011) (explaining that performing legal research on a similar matter would not be disqualifying, but that lawyers were disqualified where they had obtained confidential factual information about the City's practices while representing the City in a prior class action on the same subject that was applicable to the current matter).