

ETHICS OPINION

RO-82-648

████████████████████

QUESTION:

" Please advise me as to when I could represent a client in a criminal matter and civil matter, so long as I am the prosecutor for the City of A██████████.

I prosecute not only the traffic and other general criminal cases, but also zoning and other ordinance violations."

ANSWER:

There would be no ethical impropriety in your defending criminals in the State courts or representing parties to civil litigation in the State courts if no municipal police officers of the City of A██████████ are involved, the criminal matters which you defend are based solely on alleged violations of state law, the municipality is not involved directly or indirectly in any criminal or civil litigation wherein you represent the parties and in your capacity as prosecutor for the City of A██████████ you had no substantial responsibility in any facet of the matter which you undertake as a private practitioner to represent a party therein whether the same be criminal or civil.

DISCUSSION:

Disciplinary Rule 5-101(C) provides:

" A lawyer shall not represent a party to a cause or his successor after having previously represented an adverse party or interest in connection therewith."

Disciplinary Rule 5-105(A) provides:

" A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C)."

Disciplinary Rule 9-101(B) provides:

" A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee."

[REDACTED]

In Ethics Opinion 10 (1976) the Grievance Committee answered a question almost identical to the one which you pose. The Grievance Committee cited with approval and followed Informal Opinion 1285 of the American Bar Association Committee on Ethics and Professional Responsibility. This opinion dealt only with an assistant city prosecutor defending defendants in criminal matters. However, we are of the opinion that if a city prosecutor can defend criminal defendants when no municipal police officers are involved, the criminal charges are based solely on alleged violations of state law and the municipality is not otherwise directly or indirectly involved or affected, there would be even less impropriety in representing parties in civil litigation where the same conditions apply.

It is assumed for the purposes of this opinion that your contract with the City of A [REDACTED] permits you to engage in the private practice of law. We do not intend to imply by this opinion that conflicts might not arise in a particular situation which would preclude you from acting as defense counsel in criminal cases or representing either party in civil litigation. However, your acting as private counsel in litigation which you described in your request for opinion would not be unethical per se if the foregoing guidelines are followed.

WHMjr/vf